UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1991/10
2 January 1991

Original: ENGLISH/FRENCH

COMMISSION ON HUMAN RIGHTS
Forty-seventh session
Item 5 of the provisional agenda

VIOLATIONS OF HUMAN RIGHTS IN SOUTH AFRICA: REPORT OF THE AD HOC WORKING GROUP OF EXPERTS

Final report of the Ad Hoc Working Group of Experts on southern Africa prepared in accordance with Commission on Human Rights resolutions 1990/11 and 1990/26 and Economic and Social Council decision 1990/228

GE.90-14019/2735B

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INTRODUCTION

A. Mandate and composition of the Ad Hoc Working Group of Experts

1. Since its establishment in 1967, the Ad Hoc Working Group of Experts on southern Africa has had its mandate extended and broadened through various resolutions and/or decisions of the Commission on Human Rights and the Economic and Social Council. In pursuance of its mandate, the Group has carried out various investigations into allegations of human rights violations in South Africa and Namibia and has submitted several reports on the subject to the Commission on Human Rights, the Economic and Social Council and the General Assembly at its explicit request.

2. Following the demise of Mr. Branimir Jankovic (Yugoslavia) on 29 September 1990, and the resignation on 22 November 1990 of Mr. Humberto Diaz Casanueva (Chile), Vice-Chairman; the Group is currently composed of the following members, serving in their personal capacity and appointed by the Commission on Human Rights: Mr. Leliel Mikuin Balanda (Zaire), Chairman/Rapporteur; Mr. Felix Ermacora (Austria); Mr. Mulka Govinda Reddy (India) and Mr. Elly Elikunda E. Mtango (United Republic of Tanzania).

3. At its forty-fifth session, in resolution 1989/5, the Commission on Human Rights decided that the Ad Hoc Working Group of Experts should continue to investigate and study the policies and practices which violated human rights in South Africa and Namibia (para. 27). The Commission also requested the Group, in co-operation with the Special Committee against Apartheid and other investigatory and monitoring bodies, to continue to investigate cases of torture and ill-treatment of detainees and the deaths of detainees in South Africa (para. 28). Furthermore, the Commission requested the Group to continue to bring to the attention of the Chairman of the Commission on Human Rights, for whatever action he might deem appropriate, particularly serious violations of human rights in South Africa which might come to its attention during its studies (para. 30).

4. The Commission on Human Rights also renewed its request to the Government of South Africa to allow the Group to make on-the-spot investigations of the living conditions in prisons in South Africa and of the treatment of prisoners.

5. At its forty-fifth session, in resolution 1989/5, paragraph 29, the Commission on Human Rights renewed its request to the Government of South Africa to allow the Ad Hoc Working Group to make an on-the-spot investigation of living conditions in prisons in South Africa and treatment of prisoners. In that connection, in a letter of 21 February 1990 addressed to the South African Government through its Ambassador and Permanent Representative to the United Nations Office at Geneva by the Chairman of the Ad Hoc Working Group of Experts, the South African Government was invited to co-operate with the Group in the framework of its fact-finding mission. The letter read as follows:

> "On behalf of the Ad Hoc Working Group of Experts on southern Africa, I should like to thank your Government for its co-operation in connection with the Group's recent visit to Namibia to carry out an on-the-spot investigation.

"During its deliberations in Windhoek, the Working Group expressed the hope that your Government would continue its co-operation by enabling it to visit the Republic of South Africa in the near future, in accordance with Commission on Human Rights resolution 1989/5, paragraph 29, in which the Commission, inter alia, renewed its request 'to the Government of South Africa to allow the Ad Hoc Working Group of Experts to make on-the-spot investigations of the living conditions in prisons in South Africa ... and the treatment of prisoners'.

"In this connection, I should like to advise you that the Working Group intends to undertake its regular field mission to the region from 19 August to 14 September 1990.

"The Working Group would be most grateful if your Government were to facilitate its task under the provisions of the above-mentioned resolution."

6. A further letter was addressed by the Chairman of the Group to the South African Government on 19 June 1990, which read as follows:

"Having been informed by the Centre for Human Rights that your Government might favourably consider a visit of the Working Group to South Africa in implementation of paragraph 29 of Commission on Human Rights resolution 1989/5, I should like to take this occasion to express once again the Group's appreciation to your Government for its continuing co-operation.

"The Ad Hoc Working Group would be most grateful to your Government if it could facilitate arrangements for such a visit and offer the Group every assistance, with a view to enabling it to submit to the Commission on Human Rights the most ample and complete information available. The modalities and the itinerary of the visit could be examined between the Permanent Mission of South Africa to the United Nations Office at Geneva and the Centre for Human Rights".

7. On 18 July 1990, the following note verbale was addressed to the Government of South Africa by the Under-Secretary-General for Human Rights:

"The Secretariat of the United Nations presents its compliments to the Permanent Mission of South Africa to the United Nations Office at Geneva and has the honour to refer to the communications dated 21 February and 19 June 1990 from the Chairman of the Ad Hoc Working Group of Experts on southern Africa in respect of the Group's proposed visit to South Africa.

"In this connection, the Chairman of the Ad Hoc Working Group has requested the Secretariat to communicate to the Permanent Mission the Group's suggestions for its activities during the proposed visit. Accordingly, a draft programme of activities together with a tentative list of members of the Working Group and accompanying Secretariat staff expected to participate in the visit is attached to the present note."

8. On 10 August 1990, a telephone call was received from the South African Ambassador and Permanent Representative, conveying to the Working Group on behalf of his Government a message to the effect that his Government considered the time inopportune for such a visit. It was suggested that the Working Group's request be renewed.

9. Furthermore, at its forty-fifth session, the Commission, appalled at the evidence that children in South Africa were subjected to detention, torture and inhuman treatment, adopted resolution 1989/4 in which it requested the Ad Hoc Working Group of Experts to pay special attention to the question of detention, torture and other inhuman treatment of children in South Africa and report to the Commission on Human Rights at its forty-fifth session. This was renewed at its forty-sixth session by resolution 1990/11. Consequently the Group deals with this question in chapter V of the present report.

10. The Economic and Social Council, for its part, adopted resolution 1989/82 concerning infringements of trade union rights in South Africa. Having examined the relevant extract from the report (E/1989/53), the Council requested the Group to continue to study the situation and to report thereon to the Commission on Human Rights and the Economic and Social Council. In the same resolution, the Council also requested the Group to consult with the International Labour Organisation and the Special Committee against Apartheid, as well as with international and African trade-union confederations.

11. At its forty-sixth session, under resolution 1990/60, the Commission on Human Rights decided to terminate the mandate of the Ad Hoc Working Group of Experts in respect of Namibia, since Namibia achieved independence on 21 March 1990. Ten political parties participated in the elections which had taken place in October 1989, under the supervision of the United Nations Transition Assistance Group and representatives of the Government of South Africa. The elections were declared to be free and fair and in accordance with various stipulations, specifically those laid down by Security Council resolution 435.

12. Thus, in carrying out its mandate, the Ad Hoc Working Group of Experts held consultations and considered a large volume of documentation from the above-mentioned organizations during the fact-finding mission it undertook in August and September 1990.

B. Organization of work and working methods adopted by the Ad Hoc Working Group of Experts

Meetings and fact-finding mission

13. The Group, continuing the line of action it had been observing since its establishment, decided on the modalities for the fact-finding mission by taking into consideration both the mandate entrusted to it by the Commission on Human Rights and the Economic and Social Council and the special situation prevailing at that time and still prevailing in South Africa.

14. Given the complementary nature of the two mandates, the Group once again undertook its mission in conjunction with Mr. S. Amos Wako, Special Rapporteur on Summary or Arbitrary Executions, in order to gather on-the-spot information concerning violations of the right to life.

15. With a view to collecting as much information as possible and gathering testimony on developments since its latest interim report (E/CN.4/1990/7), the Group heard witnesses at London from 20 to 24 August, at Dar-es-Salaam from 27 to 31 August, at Lusaka from 3 to 5 September, and at Harare from 7 to 12 September 1990.

Procedure followed in conducting the fact-finding mission

16. Following its practice and in keeping with its mandate, the Group requested co-operation from the Member States concerned, intergovernmental and non-governmental organizations, as well as human rights institutions and private individuals, in order to hear the greatest possible number of witnesses that might provide it with reliable information on the questions falling within its mandate. The procedure followed and measures taken by the Group with regard to the organization of its fact-finding mission are described below.

Relations with Governments

17. Furthermore, in addition to the steps already taken (see paras. 5-12) on 23 July 1990, the Under-Secretary-General for Human Rights, acting at the request and on behalf of the Chairman of the Group, sent a letter to the Chargé d'Affaires of the Permanent Mission of the United Kingdom to the United Nations at Geneva, drawing attention to the Group's mandate and activities and inviting his Government to co-operate in helping it to fulfil its mandate.

18. On 30 July 1990, the Under-Secretary-General for Human Rights, acting at the request and on behalf of the Chairman of the Group, sent a cable to the Ministers for Foreign Affairs of the United Republic of Tanzania, Zambia and Zimbabwe, drawing their attention to the Group's mandate and activities and inviting their Governments to co-operate in helping it to fulfil its mandate.

19. The Ad Hoc Working Group of Experts would like to express its deepest thanks to all those Governments for the full co-operation it enjoyed.

20. As indicated in paragraph 7 above, in the letter addressed to the Government of the Republic of South Africa, the Ad Hoc Working Group of Experts drew the Government's attention to its activities and to the relevant resolutions of the Commission on Human Rights and the Economic and Social Council and asked whether the Government could in any way facilitate the Group's work in conformity with the mandate described in those resolutions in the framework of its fact-finding mission.

Relations with United Nations bodies and the specialized agencies

21. Despite the Commission on Human Rights and the Economic and Social Council recommendations for close co-ordination between the parties involved, the Ad Hoc Working Group regrets inadequate co-operation with the Special Committee against Apartheid. On the other hand, it welcomes the close co-operation it has enjoyed with the International Labour Organisation. The Group wishes to repeat its request to be kept informed of the holding of any conferences, seminars or symposia organized under the auspices of the Special Committee against Apartheid and the International Labour Organisation, in order to follow the development of the situation in the region and to be in a

position better to analyse the supplementary information it receives on a regular basis. A recommendation to that effect is made in chapter VI containing the Group's recommendations to the Commission on Human Rights.

Relations with the Organization of African Unity (OAU)

22. The Ad Hoc Working Group of Experts addressed a letter to the Administrative Secretary-General of the OAU and to the Executive Secretary of the Co-ordinating Committee for the Liberation of Africa, informing them of its mission and inviting them to kindly co-operate with the Group in the fulfilment of its mandate. The Working Group also held consultations with Mr. S.K. Sibajeni, Assistant Executive Secretary of the Organization for African Unity Co-ordinating Committee for the Liberation of Africa, in charge of policy, information and defence, in the absence of Brig. Gen. Mbitha.

Relations with African liberation movements, non-governmental organizations and private individuals

23. On 6 August 1990, the Centre for Human Rights, acting on behalf and at the request of the Ad Hoc Working Group of Experts, advised several non-governmental organizations and the main African liberation movements of the Group's mandate and invited them to transmit any information that might help it to fulfil its mandate. Furthermore, either at the proposal or request of the organizations, a large number of private individuals were invited to appear before the Group, strictly following the procedure applicable by the Group as described in the following paragraph. Others came before the Group spontaneously.

Testimony collected

24. During its fact-finding mission, the Ad Hoc Working Group of Experts held 26 meetings and heard 62 witnesses, of whom four were heard at private meetings at their own request; for that reason their names do not appear in the report. The witnesses who testified at public meetings are listed below. Besides these direct accounts, the Group had available a large volume of documentation transmitted by various organizations and/or individuals who had not been able, for reasons beyond their control, to appear before the Group during its mission. The records of the testimony given in public session are on file with the secretariat of the Ad Hoc Working Group of Experts.

25. The following witnesses were heard at public meetings: Mr. N. Rubin and Ms. Adrienne Barnett (771st meeting, London); Mr. Enzo Friso and Ms. Marie Anne Paquet (772nd meeting, London); Mr. Michael Terry (773rd meeting, London); Ms. Lucia Otto and Mr. Sipho Pityana (774th meeting, London); Dr. Frances D'Souza and Ms. Zarina Maharaj (776th meeting, London); Mr. Matsobane Sekhukhuni, Mr. Leslie Lwana and Mr. Thami Mbhize (777th meeting, Dar-es-Salaam); Mr. Afrika Wata, Mr. Kyani Miya and Mr. Prince Dabula (778th meeting, Dar-es-Salaam); Mr. James Mhlongane, Mr. Sydney Simielane, Mr. Mpompoyi Mgwenya and Mr. Vusile Khaya (779th meeting, Dar-es-Salaam); Ms. Bellicia Mali, Mr. Dingaan Hlophe, Mr. Sammy Tshokolo, Mr. Mongezi Bene, Mr. Cyril Tsoaeli and Mr. Irvin Stetla (780th meeting, Dar-es-Salaam); Mr. Press Boreko, Mr. Themba Kole, Mr. Mzwandile Zulu, Mr. Terror Phakassi, Mr. Edgar Mtalala, Mr. Bheki Sizwe and Mr. Denis Sijila (781st meeting, Dar-es-Salaam); Mr. Abbey Nodmase,

Mr. Cedric Dadoo, Mr. Dick Rabodu and Ms. Lungie Thwala (782nd meeting, Dar-es-Salaam); Mr. Jeffrey M. Marishane, Mr. Sam Jomoja, Mr. Mxolisi Dhlamini, Mr. Attie Mtlebi, Mr Velile Gantane, Mr. Martin Sere and Mr. Shoes Photograph (786th meeting, Lusaka); Mr. Sello Qwabi, Mr. Poplar Ledwabe, Mr. Batho Kaufela and Mr. Picnic Zamla, (787th meeting, Lusaka); Mr. Langa Gabuza, Mr. Steven Zondo, Mr. Trash Sun, Mr. Bally Frasun, Mr. Chippa Mdokoane, Mr. Ali Pedroza and Mr. Hahem Sezela (788th meeting, Lusaka); Mr. Brian N. Currin (794th meeting, Harare); Ms. Joanne Yawitch and Mr. Gregory A. Nott (795th meeting, Harare).

26. In conformity with the procedure followed by the Ad Hoc Working Group of Experts since 1967, each witness, after stating his or her identity, was invited by the Chairman to take an oath or make a solemn declaration.

27. The Chairman explained to each witness the goal of the mission and the different subjects which the Group was responsible for investigating. Whenever a witness did not speak or understand one of the working languages of the United Nations, the Group used the services of interpreters, who were also required to take an oath or make a solemn declaration that they would do their best faithfully to interpret the testimony.

C. Other activities of the Group during its mission

28. During its visit to the United Kingdom, the Working Group was received in London on 21 August 1990 by H.E. Mr. M. Lennox-Boyd, Foreign Minister in charge of United Nations Affairs. Views were exchanged on the current situation in South Africa, with particular emphasis on the prevailing violence and reference was made to sanctions. The question of the detention of Mr. "Mac" Maharaj was also raised.

29. During its visit to the United Republic of Tanzania, the Group was received in Dar-es-Salaam by the Permanent Secretary of the Ministry of Foreign Affairs, H.E. Mr. Ashour Abbas, on 31 August 1990. The situation in South Africa, with special reference to the prevailing violence and the detention under Section 29 of the Internal Security Act of Mr. "Mac" Maharaj in breach of the Government undertaking of indemnity, was also discussed.

30. During its visit to Zambia, the Group was received on 5 September 1990 at Lusaka by H.E. Mr. E. Chizi, Permanent Secretary, Ministry of Foreign Affairs. Since Mr. Nelson Mandela and various African heads of State had met in Lusaka over the weekend prior to the Working Group's consultations, it was possible to discuss the situation in South Africa as reflected by the conclusions of the meeting of African heads of State. Furthermore, on 6 September 1990, consultations were held with Mr. Z.N. Jobodwana, Mr. Jacob Nxumalo, Mr. Vusi Pikoli and Mr. Nceba Njo of the ANC Legal and Constitutional Affairs Department, in order to consider their request for possible technical assistance which could be provided by the Advisory Services of the Centre for Human Rights.

31. During its visit to Zimbabwe, the Group had consultations on 11 September 1990 at Harare with officials of the Ministry of Foreign Affairs. Lengthy discussions were held concerning the ongoing violence in Natal and on the outskirts of Johannesburg.

32. During its fact-finding mission, the Group held press conferences in Dar-es-Salaam, Lusaka and Harare with a view to informing international public opinion, making the Group's mandate better known and giving maximum publicity to its activities and those of the United Nations.

33. As previously noted, the Ad Hoc Working Group was gravely concerned about the detention of Mr. "Mac" Maharaj in July 1990 while he was still covered by an indemnity under an official Gazette Notice of the Government of South Africa. Mr. Maharaj had previously been imprisoned for 12 years for his political activities, and was subjected to severe torture resulting in a broken neck. This information was given by his wife at the Group's 776th meeting, when she also expressed fears of further torture, and stated that as a detainee under Section 29 of the Internal Security Act, his life was in danger. In view of the gravity of the situation, the Ad Hoc Working Group decided to send the following telegram to the Chairperson of the Commission on Human Rights and a similarly worded one to the Secretary-General:

> "The Ad Hoc Working Group of Experts on southern Africa, currently meeting in London (United Kingdom) is greatly distressed about the fate of the ANC leader 'Mac' Maharaj, who was listed among ANC political leaders to whom indemnity from prosecution was granted in accordance with proclamation R91 of 1990. When Mr. Maharaj returned to South Africa on 15 June 1990, he was arrested on 25 July 1990 by the South African police, in spite of the fact that his name figured on the said indemnity list, and is still detained incommunicado without permission to see his family and his lawyer.
>
> "The Ad Hoc Working Group is further greatly distressed to note that the South African Government's second list of political leaders to whom indemnity from prosecution was extended as of 20 August 1990 does not include ANC members Mr. 'Mac' Maharaj, Mr. Chris Hani and Mr. Ronnie Kasril. Their omission leaves them open to arrest and prosecution, as they are no longer covered by the immunity previously guaranteed to them by the Government to enable them to return to South Africa to participate in the current process of negotiations.
>
> "The arrest and detention incommunicado of Mr. Maharaj under Section 25 of the Internal Security Act is not only in violation of the indemnity from prosecution previously granted to him and of international human rights standards, but is also a failure on the part of the South African Government to honour its commitment.
>
> "This action, which shows lack of security guarantees and predictability, could seriously jeopardize the successful conclusion of negotiations and undermine the confidence of the ANC representatives who recently announced their decision to suspend the armed struggle in order to achieve their democratic rights. We, the members of the Group, therefore have the honour to request you to intervene with the Government of South Africa and to undertake such action as you may deem appropriate, in accordance with paragraph 30 of Commission on Human Rights resolution 1989/5 and paragraph 28 of Commission on Human Rights resolution 1990/26."

34. The Natal violence, which spread to black townships around Johannesburg in August resulting in hundreds of deaths, was also a matter that was examined by the Group. In view of the gravity of the situation, the Ad Hoc Working Group decided to send the following telegram to the Chairperson of the Commission on Human Rights and a similarly worded one to the Secretary-General:

> "The Ad Hoc Working Group of Experts on southern Africa, currently meeting in London (United Kingdom), has had confirmation of further deterioration in the situation in Natal and of the tragic events of recent weeks. The escalation of violence, which has spread to Soweto, Ermelo, Thokoza, Kathlehong and Vosloorus, has reportedly resulted in more than 500 deaths in the past two weeks. These tragic events once again underscore the urgency of meaningful action by the international community.
>
> "In this connection, the Working Group is convinced that concerted action by the parties concerned could contribute constructively to lessening the likelihood of further violence and will facilitate the conclusion of the current negotiations.
>
> "We, the members of the Group, therefore have the honour to request you to intervene with the parties concerned and to undertake such action as you may deem appropriate, in accordance with paragraph 30 of Commission on Human Rights resolution 1989/5 and paragraph 28 of Commisison on Human Rights resolution 1990/26."

D. Basic international norms affecting the questions within the Group's competence

35. In preparing its report, the Group took into consideration the basic international norms relating to its activities. It should be pointed out that all provisions contained in these norms prohibit any form of racial discrimination.

36. In the opinion of the Ad Hoc Working Group of Experts, the Universal Declaration of Human Rights represents the United Nations General Assembly's interpretation of the expression "human rights and fundamental freedoms" appearing in the passages quoted from the Charter of the United Nations. The Group reaffirmed that the obligations incumbent on Member States under those provisions of the Charter had been broadened by the more precise statement of rules contained in the Universal Declaration. It also stated that the provisions of the Universal Declaration should be recognized as general principles of international law in view of the fact that they had been accepted by a very large number of States and international organizations.

37. Without prejudice to other provisions contained in international instruments, the Group took account of the resolutions adopted by the General Assembly at its forty-third, forty-fourth and forty-fifth sessions and of resolutions adopted by the Security Council during the period under review in relation to its mandate. At its forty-fourth session, on 17 September 1990, the General Assembly adopted resolution 44/244 on policies of apartheid of the Government of South Africa.

38. The present report, which contains conclusions and recommendations, was prepared in conformity with the mandate entrusted to the Ad Hoc Working Group of Experts by the Commission on Human Rights and the Economic and Social Council in the above-mentioned resolutions. It is therefore based principally on the first-hand information collected by the Group in the form of oral testimony and written communications from private individuals or organizations during the fact-finding mission it conducted from 20 August to 12 September 1990. In addition, the Group systematically studied and analysed documents of the United Nations and specialized agencies, official journals and records of parliamentary debates in South Africa, and publications, journals and reviews from various countries, as well as works dealing with questions relating to its mandate.

39. The Group then met from 3 to 13 December 1990 at the United Nations Office at Geneva to consider and adopt the present report.

E. General comments

40. The information collected led the Ad Hoc Working Group of Experts to establish the following facts regarding the human rights situation in South Africa. During the period under consideration this situation was principally characterized by (a) the partial extension of the state of emergency, which has continued to cause new outbreaks of violence. The extremely broad powers, including immunity granted to the police and armed forces, have given rise to abuses of authority; (b) the persistence of massive repression against students and trade-union members; (c) the recrudescence of the policy of forced population removals, which has given rise to clashes between the inhabitants of the places to be evacuated and the police and security forces; (d) the continued restrictions imposed on freedom of expression, making censorship the key element for limiting the activities of both South African journalists and foreign correspondents; (e) the growing number of arrests and detentions without trial of political prisoners and of cases of torture and ill-treatment, in particular against children.

41. President F.W. de Klerk announced in Parliament, on 2 February 1990, that far-reaching and fundamental changes would be introduced in South Africa. Following this statement, 11 political prisoners, including Mr. Nelson Mandela, were released on 11 February 1990. Thirty political parties and organizations were unbanned and restrictions imposed on former detainees were removed. The African National Congress (ANC), the Pan Africanist Congress of Azania (PAC) and the South African Communist Party, although officially have been unbanned, there are still a number of restrictions on their freedom to pursue political activity.

42. After some informal contacts, "talks about talks" took place between representatives of the Government of South Africa and Mr. Nelson Mandela in May 1990. At the conclusion of this meeting the "Groote Schuur Minute" (see Annex I) was released on behalf of both parties. On 6 August 1990, a further round of talks was conducted which resulted in the "Pretoria Minute" (see Annex II). Among many other issues, a definition of political prisoners was agreed upon. According to the Government Gazette Notice No. 12384 dated 7 November 1990, the working group established under the "Groote Schuur Minute" to make recommendations on a definition of political offences in the South African situation presented its final report, which was accepted by both parties, i.e. the ANC and the Government of South Africa. After formulating

the guidelines to be invoked, the Government accepted that, inter alia, the following classes of persons, whether inside or outside South Africa, would be taken into account with regard to the grant of pardon, indemnity or release for political offences:

"(a) Persons already sentenced, including persons serving a sentence, persons subject to any suspended sentence, persons awaiting execution of a sentence or where the case is on appeal or review.

(b) Persons who may be liable to prosecution, or who are awaiting or undergoing trial.

(c) Persons in detention."

43. According to this same Gazette Notice, decisions would be based upon considerations such as: the motive of the offender, the context in which the offence was committed, the nature of the political objective, the legal and factual nature of the offence, the object and/or objective of the offence, the relationship between the offence and the political objective being pursued, and the question of whether the act was committed in the execution of an order or with the approval of the organization, institution or body concerned. It was also important that the ANC agreed to suspend armed struggle (see Annex II, para. 3).

44. The internecine violence in the province of Natal, which had begun in Sebokeng in late March 1990, spread to the townships in the Johannesburg area in August and the fierce fighting between Inkatha supporters of Zulu Chief Mangosuthu Buthelezi and ANC supporters. Increasing deaths and violence resulted in the imposition of dusk-to-dawn curfews in 19 magisterial districts, affecting 27 townships around Johannesburg. The carrying of pangas (machetes), firearms, sticks and home-made weapons was banned. The police were given wide powers, including arrest without charge and of holding those arrested for up to 12 hours for questioning. Taken together with the provisions of legislation such as the Public Safety Act and the Internal Security Act, the new provisions made on 24 August 1990 have resulted in hardships which compare with those under the worst conditions of the state of emergency imposed in South Africa (see chapter I, para. 80 et seq.)

I. RIGHT TO LIFE, PHYSICAL INTEGRITY AND PROTECTION FROM ARBITRARY ARREST AND DETENTION

Introduction

45. The situation of the black population of South Africa in regard to the right to life, a fundamental human right, for the period under consideration is a matter of grave concern for the Ad Hoc Working Group. It has noted the measures which have been adopted by the South African Government, such as the moratorium on the death penalty and the possible release of political prisoners in cases where they fall under the agreed definition under the "Pretoria Minute" (see Annex II). However, in view of the information received, as detailed below, it would appear that the situation on the ground remains quite unchanged, despite the stated intention of the Government of President F.W. de Klerk to bring about profound and far-reaching changes.

The Working Group has also received information which alleges not only a lack of impartial intervention in containing violent situations, but also arbitrary police shootings which take place in the course of peaceful demonstrations.

A. Right to life

General

46. The Ad Hoc Working Group has followed closely events which have a bearing on the right to life, a fundamental right that has not been respected in South Africa as far as the black population is concerned. After the landmark statement of President F.W. de Klerk on 2 February 1990, it was hoped that a more humane and equitable approach would emerge, but, whereas many encouraging steps have been taken to this end, the long-standing pattern of violence leading to deaths among the black population in South Africa continues as before. Instances of deaths reported by the media given below, and testimonies from ex-detainees and eyewitnesses of police brutality while dispersing peaceful protests, have led the members of the Working Group to conclude that the Government of South Africa has, as in the past, not shown any concern or respect for the life of the black population of South Africa.

47. According to the Sunday Tribune of 14 January 1990, a black constable, Elias Sanguwane, from Jeppe police station, was assaulted by his white superiors and subsequently died in hospital of a brain haemorrhage. He had been taken to hospital by colleagues after being left, battered and bleeding from the beating. It was alleged that he had failed to lock the gates of the police station, which had been his duty. */

48. The Sowetan of 25 January 1990 reported that two Khutsong residents were shot dead when police opened fire with shotguns as a crowd of protestors was dispersing after handing a letter to the police listing grievances which included alleged police brutality. Many were reportedly injured, according to a lawyer and a diplomat who were attempting to diffuse the situation. */

49. It was reported in The Sowetan of 8 February 1990 that a crowd of thousands marching in Garankuwa was fired on by Bophuthatswana security forces, using tear-gas and rubber bullets. At least one person died later in hospital and 17 were treated for injuries. The protest was against the "homeland" system. It was also alleged that a police van ran into a group of persons, injuring nine of them. */

50. It was reported in New Africa of 9 February 1990 that a youth was shot dead in Lamontville when police allegedly opened fire on a crowd of "toyi-toying" youths passing by the police charge office. */

51. It was reported in The Star of 12 February 1990 that, at a rally held in Tokoza to protest against high rents, police opened fire, killing three and injuring about 100. Police claimed to have acted against stone-throwers and persons burning cars, but injured victims denied these claims. */

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*/ Human Rights Update, January to February 1990 (Vol. 3, No. 1), pp. 12 to 17.

52. The Star of 13 February 1990 reported that two youths had been shot dead in Barkly East. Residents said they had been celebrating the release of Nelson Mandela, but the police claimed they had attacked a policeman's home. It was also reported that police and marchers clashed in Hammanskraal, Bophuthatswana, during a celebration of the release of Nelson Mandela and a 16-year-old youth was killed. It was also reported that 10 persons were shot dead and up to 20 injured when police opened fire on celebrating crowds in Mdentsane, Ciskei. A reporter allegedly saw police firing from the rooftop of a police station into the "toyi-toying" crowd. */

53. According to The Star of 16 February 1990, at least four were killed and many injured when police tried to turn back persons who were on their way to the Bloemfontein Appeal Court after a meeting in the township of Botshabelo, Orange Free State, to protest against forced incorporation into QuaQua. */

54. According to the City Press of 25 February 1990, police shot dead Bongi Nyokong (17), a student from Tlokwe Secondary School, Potchefstroom, as he hid under a teacher's bed. The incident followed a day of violence in the township and an abortive march by teachers on the Department of Education and Training offices.

55. According to The Star of 27 February 1990, Bophuthatswana police opened fire on a crowd of 8,000 residents of Thlabane, near Rustenburg, killing two and injuring at least 17. The demonstration had been calling for the re-incorporation of Bophuthatswana into South Africa. It was further reported that two persons were killed in a stampede when tear-gas was used to disperse a crowd at a rally in Hankutama, Venda. The rally had been organized to celebrate the release of Nelson Mandela. */

56. It was reported that a youth had died in Thohoyandou after having been arrested by police while on his way to the Venda Department of Education to hand over a [list] of demands. It was alleged that he "landed heavily on the road" as he jumped out of the truck. */

57. Further, on 2 April 1990, 15 homes were burned in the township of Imbeli as a result of Inkatha attacks, just after a visit by Mr. Nelson Mandela.

58. It was reported in The Independent of 4 April 1990, that the majority of the 11,000 inhabitants of Elanskop had fled their homes to seek refuge in churches near Pietermaritzburg, 30 miles away, following the previous week's violence in the province of Natal. The Rev. Tim Smith, a Catholic priest, had discovered the bodies of Ms. Celestine Mucwabe (36) and her sister Emmerentia (32), who had been murdered. It was alleged that they had been killed because they had been standing next to people who had failed to bow to the command of "Warlord" Ntombela, as they owed their allegiance to the African National Congress (ANC). Eye-witnesses were reported to have seen Mr. David Ntombela, a close associate of Mr. Magosuthu Buthelezi, heavily armed and accompanied by police about a hundred yards away from where the

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*/ Human Rights Update, January to February 1990 (Vol. 3, No. 1), pp. 12 to 17.

murdered sisters lived. Mr. Ntombela is Inkatha's military commander in the Elandskop area, an Inkatha central committee member and the local representative of the so-called KwaZulu "homeland" parliament, over which Mr. Buthelezi presides as Chief Minister.

59. Mr. Ntombela and his associates had reportedly held a meeting on 27 March 1990. The following day, more than 115 homes were burned in his area of control and dozens of people were killed. It was alleged that Mr. Ntombela had shot and killed his brother in 1984 after an argument in the presence of witnesses, but he had never been brought to trial. It was further alleged that there was substantial evidence of direct involvement of Mr. Ntombela and his death squads in 17 other killings.

60. It was also reported that, during the course of one week in December 1989, seven known ANC sympathizers had been murdered in the Elandskop area. The violence in Natal allegedly claimed 80 lives in the week starting 27 March 1990, making a total of 3,000 since 1985.

61. It was reported in The Independent of 2 April 1990 that, although Mr. Nelson Mandela had suspended the meetings with President F.W. de Klerk planned to commence on 11 April 1990, in protest against the police shootings in Sebokeng, he had every intention of resuming discussions at a later stage. "The police," he said, "must handle demonstrations with blacks in the same way as they handle demonstrations with whites". Noting that no white demonstrator had ever been shot by the police, he added, "If the police killed one white man, the whole of white South Africa would scream at the tops of their voices. If seven whites were killed, as happened in Sebokeng, there would be an uprising and the Government would fall".

62. Le Monde of 21 April 1990 reported that, hours earlier, President de Klerk had ordered a probe into the killing of at least 11 blacks on 26 March 1990 by officers who opened fire on protestors demonstrating against high rates in the black township of Sebokeng, 200 kilometres south-west of Johannesburg.

63. The Christian Science Monitor of 13 to 19 April 1990, reported that a black miner, Mnikelo Ndamse, had been beaten to death by white vigilantes at the end of March 1990 in Welkom, a prosperous mining town 200 miles south of Johannesburg. The commander of the white vigilante group known as "Blanke Veiligheid" (BV), or "white security", was Mr. Bezuidenhout, who was facing a murder charge for the death of a black man in early 1989. The BV vigilante group had been formed in early March 1990 to halt a protest march by black teachers. It was reported to be the latest in a proliferation of white right-wing groups determined to stop the advance of the newly legalized ANC.

64. It was reported in The Independent and The Guardian of 30 April 1990, that on 28 April 1990, the Rev. Michael Lapsley was seriously injured by a letter bomb posted in South Africa. He lost both hands and his left eye in the explosion. Originally from New Zealand, Rev. Lapsley had been a chaplain at the University of Natal in the 1970s, until his expulsion from South Africa for anti-apartheid activities. The Zimbabwe-based Anglican priest had received death threats from South African white extremists in the past, and for the last three years had been under police protection in Harare. Church leaders in Harare believed he had been the victim of agents of Pretoria.

Rev. Lapsley, who was in his early 40s, had been one of the most visible ANC activists in Zimbabwe, speaking frequently on anti-apartheid, but he had been barred from such activities two years ago by the Anglican hierarchy. Since then, he had worked for the Lutheran World Federation and chaired the ANC scholarship committee.

65. It was reported in The Guardian of 15 May 1990 and the Weekly Mail of 18 to 24 May 1990, that a second "Trojan horse" incident had taken place on 15 May 1990 in the Orange Free State town of Maokeng, when two youths were killed and eight injured. Mr. Simon Tsotsotso, together with other eye-witnesses, claimed that police in disguise had driven into the town in a rented truck hidden under a tarpaulin. When the truck stopped, it was surrounded by a throng of youths. Suddenly, the tarpaulin was lifted and several armed policemen allegedly sprang out and opened fire. The owner of the truck, Barnett's Auto Spares, admitted having hired the truck to the police. The two killed were Seiso Mangwerijane (9) and Isaiah Tau (18), while Joseph Tshabalala (13) was among the injured.

66. The general secretary of Maokeng Democratic Crisis Committee (MDCC) was reported to have said that since the Maokeng community had embarked on a rent boycott in February 1990, police had been harassing residents. The homes of three MDCC members had been petrol-bombed in April 1990. It was further reported that youths had set fire to six vehicles in mid-May 1990, after having been harassed by police. The spokesman for the Minister for Law and Order, Brigadier Leon Mellet, denied that the police had deliberately hidden in the truck, saying that they had fired because a group of persons had stoned the vehicle after surrounding it when it stalled.

67. It was widely reported on 22 May 1990, that four persons had been killed and 18 wounded when police fired on a crowd leaving a meeting in Thabong, a black township adjoining Welkom, 300 kilometres south of Johannesburg, on 20 May 1990. Three of the wounded died the following day. Racial tension had been mounting since white extremists began vigilante patrols in March 1990, ostensibly to fight crime by blacks. Blacks had responded to attacks by boycotting white businesses.

68. A crisis had erupted with the killing of two whites on 16 May 1990 in a clash at the President Steyn mine, where younger black miners had taken to wearing ANC T-shirts and badges, and scrawling its slogans on the mine walls in defiance of a company ban against political activity. Some black miners blocked white superiors who had tried to board a mine elevator, used their changing rooms and held sit-ins underground. White miners contended that their lives were in danger because they were vastly outnumbered. In addition to the two whites killed on 16 May 1990, four security officers and 14 demonstrators were wounded.

69. On 20 May 1990, black leaders agreed to try to calm the situation by suspending the boycott, and at a meeting on 18 May 1990, both sides argued with Mr. Adriaan Vlok, Minister of Law and Order, to set up a forum to air their differences. However, tensions remained high.

70. An IDAF representative gave details at the Working Group's 774th meeting of this incident. The witness reported that on 18 July 1990, COSATU representatives had informed the Minister of Law and Order that they had

received reports of a planned attack by Inkatha on ANC and COSATU supporters in Sebokeng, as decided by Inkatha officials in Ulunedi on 10 July 1990. Further, COSATU lawyers informed the Divisional Commissioner of Police and the Commissioner of Police. It was reported that Col. Mozibuko gave an undertaking that the police would ensure that Inkatha supporters would attend the rally planned for 22 July 1990 unarmed. Instead, 500 to 600 Inkatha members arrived heavily armed and accompanied by white police officers. They attacked Sebokeng residents in the presence of the police. It was further reported that when the residents tried to resist, they were fired upon by the police, and 19 people were killed. By the next day, the death toll had reached 30.

71. A report appearing in South African Barometer of 28 September 1990 stated that the first clash between Inkatha members and ANC supporters had occurred in Sebokeng on 22 July 1990, following an Inkatha rally in the township, and had left 27 dead. The incident was at first thought to have been an isolated one, but in the following weeks, hundred of persons lost their lives as the violence spread through the East Rand, West Rand and Soweto. The final death toll at the time of writing this report was more than 700.

The Lubowski case

72. The Working Group would like to make special reference of the assassinations of Mr. Anton Lubowski and Mr. David Webster, not only because of the conditions in which these murders were perpetrated (see E/CN.4/1990/7, paras. 30 (f), 262 and 263), but also due to the fact that these individuals were personally known to the members of the Working Group.

73. It was reported in The Independent of 24 April 1990, that a 52-year-old Irishman, Donald Acheson, who had been arrested in Windhoek on 13 September 1989 and charged with the murder of Anton Lubowski, the first white person openly to join the South West Africa People's Organization (SWAPO) and propagate its cause, was granted bail of R.4,000 (£920) on 23 April 1990. The case was adjourned until 7 May 1990 by Acting Judge Ismail Mohammed, while the Namibian Government discussed the question of the extradition of six former South African policemen, two of whom had been charged jointly with Mr. Acheson.

74. The Independent of 8 May 1990 reported that Mr. Acheson had been released on 7 May 1990, after all charges against him were dropped owing to lack of evidence. In the absence of an extradition treaty with South Africa, Namibia was unable to secure the presence of key witnesses, who had refused to come forward, despite being promised immunity. Namibia's Chief Prosecutor said that without their testimony the case against Mr. Acheson was "non-existent".

75. According to The Guardian of 8 May 1990, charges against Mr. Acheson had been dropped primarily because the State was unable to secure the extradition of two key witnesses, "Staal" Burger and Chappie Maree, both ex-policemen from South Africa. They had been named as members of the South African secret special forces unit, the Civil Co-operation Bureau (CCB), a shadowy South African under-cover unit linked to death squad killings of political enemies of Pretoria, and were alleged to have taken part in the assassination of Mr. Lubowski.

Webster killing

76. It was reported in The Guardian of 9 May 1990 that Colonel Floris Mostent, who was leading the investigation into the assassination of Mr. David Webster, claimed to have information that two employees of the Civil Co-operation Bureau (CCB) had been involved in the murders of both Mr. Webster and Mr. Lubowski. The Weekly Mail of 18 to 24 May 1990 reported that Mr. Webster had been surrounded by spies before he was killed on 1 May 1989. It was reported that, in his evidence before the Hiemstra Commission of Inquiry (see below), Mr. Tony Naude had admitted to spying for the Johannesburg City Council and the security police on the activities of the Five Freedoms Forum (FFF) contact group, which had been chaired by Mr. Webster. Under cross-examination, Mr. Naude reportedly showed little understanding of the role or activities of the FFF; yet his observations, which were handed on to higher authorities within the security network, were acted upon.

77. A month after the assassination of Mr. Webster, other FFF members had also been subjected to attacks. Mr. Jan Mullen died when his house was burned down and, although the inquest concluded accidental death, FFF representatives still believed that foul play might have been involved. On 25 May 1990, Mr. Lambros Marinaki was reportedly shot at twice in his bedroom. It should be recalled that the flat of Ms. Jean de la Harpe had been raided by security police in October 1988, shortly after Mr. Naude had attended and reported on an FFF meeting.

The Hiemstra Commission

78. According to the May 1990 report of the Independent Board of Inquiry into Informal Repression, the Hiemstra Commission of Inquiry was set up on 29 March 1990 to investigate an alleged espionage ring within the Johannesburg City Council. It was reported in March 1990 that the Council operated an espionage network, known as the Security Department, which was instructed to keep track of opposition leaders. According to the Weekly Mail of 20 April 1990, 48 organizations had been monitored, including groups such as the Democratic Party. Major Bernard, who headed the Security Department, was also a military intelligence officer and reportedly had a close relationship with the regional commander, "Staal" Burger, one of those sought by the Namibian Government in connection with the Lubowski killing (see para. 75).

79. The findings of the Hiemstra Commission were released on 29 September 1990. According to written information supplied by the Independent Board of Inquiry into Informal Repression, Mr. Justice Hiemstra found that a spy ring did exist, as alleged, which had carried out surveillance of more than 100 persons and illegally infiltrated at least 20 anti-apartheid organizations over a period of four years (Beeld of 27 September 1990). The Commission also found that a sum of R1.8 million of ratepayers' money had been spent on the spy ring (Business Day of 27 September 1990). Judge Hiemstra confirmed that the City Council spies had worked in close co-operation with Military Intelligence and with the South African Police (Beeld of 27 September 1990). The four key members of the Security Department named in the report were John Pearce, Manie Venter, Jan Visser and Frak Barnard.

Violence, including violence with the complicity of security forces

80. In its Information Notes and Briefing No. 90/4 of August 1990, the International Defence and Aid Fund (IDAF) reported that in March 1990, after the release of Mr. Nelson Mandela and the unbanning of the African National Congress (ANC), armed Inkatha-led groups had made large-scale attacks on communities supporting the United Democratic Front (UDF). These attacks continued, and in early April, 2,000 armed Inkatha supporters launched an attack on Cakusa and Ashdown. An Inkatha "impi" (armed group) from Elandskop devastated parts of Gezebuso, Vulindlela, Kwa Shange, Kwa Mnyandu and Mpophomeni, taking away possessions and livestock. The police did not intervene. As a result of these attacks, over 14,000 persons had been rendered homeless and 80 killed. Non-Inkatha sections of Imbeli and Slangspruit were also attacked.

81. In a memorandum to the Minister of Law and Order in March 1990, concerning policy in Natal, the Congress of South African Trade Unions (COSATU) and UDF stated that attorneys acting at the instance of COSATU had conducted research into police responses to incidents of violence in Imbeli township and, on the basis of affidavits provided to them and correspondence with the South African police, alleged a pattern of collaboration with Inkatha.

82. It was further reported that interdict proceedings had been instituted against Willem De Wet arising out of the torture in March 1990 of the Chairman of Imbeli Ratepayers' Association, Mr. Larry Silwane.

83. Allegations that police had a discriminatory approach to the bearing of arms by Inkatha as opposed to non-Inkatha residents, failure to prosecute Inkatha warlords, even when eye-witnesses to the continuing atrocities were available, and failure to protect witnesses, complainants or court applicants in interdict proceedings, led to a crisis of confidence in the law-enforcement agencies and the courts.

84. It was further alleged that KwaZulu police had not played an impartial role in the violence but had acted as the armed wing of Inkatha itself. It was reported in New Nation of 3 April 1990 that an estimated 24 persons had been killed when KwaZulu police raided a squatters' camp in Isithebe, Northern Natal. Residents who fled into a forest were hunted down and shot at. It was also reported that interdicts were granted against the KwaZulu police in Kwa Makuthe, Ndwedwe and Isithebe.

85. It was reported in the International Herald Tribune of 4 April and in Le Monde of 7 April 1990, that the Government of South Africa had sent police and army reinforcements to control the general unrest in Natal, where about 80 persons had died during the previous week. The total number of dead over the previous three years was reported to be more than 2,000.

86. According to information received from the National Association of Democratic Lawyers (NADEL) in its publication Nadel News of July 1990, out of 200 violent incidents recorded between January and April 1990, 195 were ascribed to Inkatha or the KwaZulu police, headed by Chief Mangosuthu Buthulezi. Eighty-five persons had been killed in those attacks, all non-Inkatha supporters. The province in Natal includes the

so-called homeland of KwaZulu, also headed by Chief Buthulezi. The Chief's political organization reportedly opposes forces affiliated with the ANC, UDF and COSATU.

87. The escalation of violence that began in mid-March was reported to have involved heavily armed Inkatha regiments pitted against defenceless ANC-supporting townships. About 14,000 residents fled their homes to evade the violence.

88. According to the same source, on 6 May 1990 the house of Dr. Aaron Ndlovu of the University of Zululand was attacked and a bomb thrown into his bedroom. Dr. Ndlovu was just one of the persons appearing on a hit list which had been widely distributed. Three others on the list had already been attacked, including Mr. Jeffrey Vilane, a COSATU regional chairman, and Mr. Sibusiso Mdletshe, an ex-Robben Island prisoner, who had been killed. Mr. Mdletshe had joined Inkatha on his release from prison but had reverted to the ANC after it was unbanned.

89. Another example of violence with the complicity of the police is reflected in the evidence of Mr. Coetzee before the Harms Commission (see paras. 124 to 128).

90. At its 773rd meeting, the Working Group heard the testimony of a representative of the Anti-Apartheid Movement, who stated that in early July 1990, the ANC and the UDF had successfully organized a 24-hour nation-wide strike to protest against the continuing violence in Natal. The protest was reported to have been supported by 80 per cent of the Zulus living in urban areas, clearly demonstrating that Inkatha did not enjoy the support of all Zulus, and that the violence was not inter-tribal, between Zulus and Xhosas. The witness further informed the Group that the violence in Natal had arisen out of deliberate and organized acts of incitement by Inkatha which had taken place in July 1990.

91. An IDAF witness reported at the 774th meeting of the Working Group that, according to figures provided by the South African Human Rights Commission, 170 deaths and 1,500 injuries had been caused by police during the first half of 1990, in the course of disruption of public gatherings.

92. The same witness reported that in July 1990, a mass meeting had been held at the local stadium in Mamoledi to discuss the rent boycott. The Transvaal Provincial Administration and the Mamoledi Civic Association reached partial agreement that rent arrears would be frozen and that, from that point onwards, rents would be payable normally. At that moment, police allegedly fired tear-gas and barred the exit. Two hundred fleeing persons were injured. The reason given for this police action was that the meeting had been illegal. When the permit authorizing the meeting was produced, the police alleged that it had not been about rents but had called for an educational boycott. Thus, the witness concluded, when meetings were held to discuss the discontinuation of a rent boycott, they were considered to be participating in a disruptive activity.

93. It was reported in the International Herald Tribune of 25-26 August 1990 that 27 black townships in 19 magisterial districts had been declared "unrest" areas for a period of three months, from 24 August 1990. Among the townships affected were Vosloorus, Kagiso, Katlehong, Tembisa, Tokoza and Soweto.

94. It was reported in The Times and The Guardian of 3 September 1990 that a report, issued by a commission headed by Justice R.J. Goldstone, had found that black demonstrators in Sebokeng township had been shot in the back when police opened fire arbitrarily or without order to do so. Justice Goldstone was appointed by President de Klerk to investigate the Sebokeng shootings in March 1990, after the ANC had called off scheduled talks with the Government in April. A white constable, S. Van Rhyn, who was alleged to have fired the first shot and Capt. W.J. du Plooy, commander of a 47-man unit, who failed to inform Col. O.P. Mazibuku that his unit was in the township, were criticized for their role in this incident, which led to at least 12 deaths and 281 injured.

95. It was reported in The Times of 6 October 1990 that the dusk-to-dawn curfew imposed in Soweto two weeks earlier was lifted on 5 October 1990. However, it continued to be operative in the black townships of Tokoza, Vosloorus and Kathlehang, south-east of Johannesburg. The curfew had been imposed in order to contain violence which had claimed more than 700 lives since the beginning of August 1990.

96. The Guardian of 9 October 1990 reported that the Minister of Justice, Mr. K. Coetsee, would appoint a judge to preside over the inquest into the killing of 11 persons by troops in the township of Sebokeng, which had occurred in early September. This appointment came in the wake of allegations that whites had been seen leading earlier attacks in the township, during which more than 20 other residents had been killed.

97. As reported in the International Herald Tribune and The Guardian of 19 October 1990, the Government of South Africa lifted the state of emergency in Natal on 18 October 1990. However, renewed violence in three townships in the industrial heartland of Transvaal reportedly ended in further clashes which took place in Toekomsrus, near Randfontein, west of Johannesburg. The Minister of Law and Order, Mr. Adriaan Vlok, imposed a 9 p.m. to 4 a.m. curfew on the township on 18 October 1990. The violence had been precipitated by the suspension of electricity supplies by the Randfontein town council, reportedly controlled by the Conservative Party. Municipal electricians, guarded by troops and police, went from door to door through the township, switching off power to individual houses.

98. An article in The Independent of 4 December 1990 reported that police armoured vehicles had been deployed in Tokoza township, east of Johannesburg, after supporters of the Inkatha Freedom Party had gone on the rampage in the early hours of 3 December 1990. Houses had been raided and battles had caused the death of at least 52 persons. The police said the victims had been shot, hacked or burnt to death. A local ANC official was reported to have said that he had seen a police armoured vehicle leading a charge by Inkatha "impis". The Minister of Law and Order imposed a curfew and state of emergency, granting police extraordinary powers of arrest, in Tokoza and three neighbouring townships where at least 12 more persons were killed the night before, and said army reinforcements would be called in.

B. Deaths in detention and in police custody

99. It was reported in the Weekly Mail of 23 February 1990 that six people had died during the months of January and February 1990 while in police custody. A seventh person, Mr. Albert Simelane, had died shortly after being

briefly detained by police in Tembisa in November 1989. Four of the seven, Nixon Phiri (16), Michael Zungu (20), Simon Tshebala (22), and Simelane, reportedly died under "suspicious circumstances", where allegations of police violence had been made.

100. Official post-mortem results allegedly revealed that Phiri, a Khutsong youth who had died while being interrogated by police, suffered a brain haemorrhage caused by external injuries and shock.

101. The post-mortem on Zungu, a school pupil at Mutubatube, Natal, reportedly revealed that he had died by strangulation. His family denied that he had strangled himself with a shoelace after being taken to a police station in Mutubatube on 29 January 1990. Witnesses were reported to have sworn that Zungu had been beaten by police and then thrown unconscious into the back of a police van, after a dispute about school fees.

102. It was also reported that, according to friends of Simelane, he had been brought to his home in Tembisa by 21 policemen on 21 November 1989 after having been severely assaulted.

103. Tshebala was reported to have died after having been held as a possible robbery suspect at Grootvlei police station in East Rand. According to police representative Captain Eugene Opperman, Tshebala had resisted arrest and "force had to be used by police, who found stolen property in his possession".

104. It was reported that Vys Namane (35) died at Hillbrow police station after complaining of breathing problems.

105. Other deaths in police custody include 20-year old Sizwe Sithole and Mandla Manana (27), both of whom had been found hanged in their cells. A commission of inquiry was opened on 30 January 1990 at John Vorster Square police station and its report, compiled by Justice R. Goldstone, was to be submitted to President de Klerk in March 1990.

106. It was reported in Focus No. 90 of 1990 (a publication issued by International Defence and Aid Fund) that three deaths in detention had been notified between May and July 1990.

107. On 14 May 1990, a man known only as "Andile" was reportedly beaten to death by two police constables in the Humansdorp police cells, according to the account of a 16-year old witness to the incident. South of 30 May and New Nation of 1 June 1990 further reported that a Supreme Court interdict had been sought to prevent the constables attacking the witness, whom they had threatened to kill for naming them as parties to the assault. The witness had reportedly been arrested for doing the "toyi-toyi" (a dance of defiance).

108. It was reported by Focus No. 88 of 1990 that Donald Thabela Madisha, a teacher and member of the Mehwelereng Youth Congress, had been detained under Section 29 of the Internal Security Act in Mehwelereng township, Potgietersrus, on 17 January 1990. The Star of 2 June 1990 and Focus No. 90, inter alia, reported that on 1 June 1990, police stated that Madisha had allegedly committed suicide by hanging. Madisha's lawyer announced that he would instigate an independent post-mortem.

109. It was widely reported on 20 and 21 July 1990, that Eugene Mbulwana (15) had been detained by police on 10 July in Khutsong. He had been held with other youths who had reportedly been on their way to the ANC office in Johannesburg to discuss ways to settle youth group rivalries which were being exploited by local vigilante groups. On 12 July 1990, Mbulwana was taken to Walverdiend police station where, according to a witness also being held there, he arrived suffering from serious head injuries. He was left, unconscious, on the cell floor for nine hours before being taken to Leratong Hospital, where he died the following day. It was reported that a scan revealed that he had suffered a haemorrhage caused by pressure on the skull. (Focus No. 87 reported that in January 1990, Nixon Phiri (16) had died while under interrogation at the same police station.)

C. Death squads

The Harms Commission

110. On 5 March 1990, Justice Lovis Harms began his inquiry into alleged "hit squads" at the N.G. Kerk Synodal Centre in central Pretoria.

111. According to the proclamation, it is required to "inquire into and to report on the alleged occurrence of murders and other unlawful acts of violence committed in the Republic of South Africa in order to achieve, bring about or further any constitutional or political aim (...) and in respect of which the judicial process has been completed or which have not been solved or in respect of which the investigations are, owing to lack of evidence, not progressing".

112. The Judge had also been asked to report on which organizations or institutions might have instructed "such murders or acts of violence as principal offender, accomplice or accessory after the fact, or have done so in the past", and find out who had paid for them.

113. The Argus, (Cape Town) of 6 March 1990 reported that General Magnus Malan, whose Department of Defence harboured an organization called the Civilian Co-operation Bureau (CCB) and alleged to be closely connected with the "hit squads", was to provide written evidence to Justice Harms.

114. It was reported in The Independent of 22 March 1990, that Brigadier Floris Mostert of the South African police had affirmed on affidavit that one of the CCB cells had been responsible for the assassination of anti-apartheid activists David Webster and Anton Lubowski.

115. According to a report published in the Johannesburg Star of 21 February 1990, a chain of command involving several generals and leading to the office of General Malan, ran the operation of the CCB, which was funded out of the South African Defence Force (SADF) budget but staffed mainly by former policemen and decommissioned army intelligence officers. According to The Star, the CCB, formed in 1987 to counter "terrorism", operated nation wide through a network of secret cells.

116. According to a statement issued by the SADF on 19 February 1990, General Magnus Malan (Defence Minister since 1980) had not given any orders to anyone to commit murder. Mr. Dennis Worrell, co-leader of the Democratic Party, was reported to have commented that, "the right question" had not been answered and that General Malan had not stated whether he knew if any political assassinations or murders had been committed by the CCB.

117. Two alleged members of the CCB were arrested in mid-February 1990 and warrants for the arrest of three others had also been issued.

118. It was reported in The Independent of 26 April 1990, that Captain Dirk Coetzee (44) had informed the Harms Commission on 25 April, during its sessions in London, that he had allegedly been instructed by Brigadier Jan Van der Hoven, regional security police commander, to "get rid" of Mr. Mxenge and make the killing look like a robbery. Mr. Coetzee and a fellow death squad member, Mr. David Tshikalange, had fled South Africa after another of his men, Mr. Almond Nofemele, decided to confess shortly before he was due to be executed for a "private" murder.

119. Mr. Coetzee, whose disclosures in a South African newspaper about political killings had forced the Government to set up the Harms Commission to investigate his allegations, described how in 1981, Mr. Sizwe Kondile, a suspected member of the African National Congress (ANC), had been murdered by the police at Komatipoort, in the Transvaal. Mr. Coetzee said he had been present when Mr. Kondile was given "knock-out drops" and then shot. It was reported that Mr. Kondile had been arrested, released, and kidnapped from his car which was then dumped on the Swaziland border, so that police records would suggest that he had fled into exile after being released. Mr. Coetzee said in his testimony that the "knock-out drops" had been supplied by General Lothar Neeghling, head of the police forensic laboratory in Pretoria, and that Mr. Kondile's body had subsequently been burned on a pyre.

120. Mr. Coetzee reportedly also gave details of the killing of Mr. Griffiths Mxenge, a Durban lawyer murdered in November 1981, describing how he had put strychnine into meat fed to Mr. Mxenge's dogs. This allegedly corroborated the accounts given by Mr. Coetzee's assistant, Mr. Tshikalame, who had testified to the Commission earlier, and by Mr. Nofemela. Mr. Coetzee alleged that the instructions to kill Mr. Mxenge had been received once again from Brigadier Van der Hoven.

121. In his testimony on the second day of the Harms Commission hearings in London, it was reported in The Independent of 27 April 1990, Mr. Coetzee described how he and his unit of "Askaris" (former ANC guerrillas who had been recruited for operations against their ex-comrades) had carried out kidnappings and murders in South Africa and neighbouring countries.

122. Mr. Coetzee, it was further reported, informed the Commission of Inquiry how, after many failed attempts to add poison (obtained from a senior officer at the police forensic laboratories) to the drinks of Mr. Vusi, a suspected ANC infiltrator who had refused to co-operate, and Mr. Peter, who had defected while studying in Bulgaria, the two men had been rendered unconscious by "knock-out drops" and had then been taken hundreds of miles across the Transvaal, shot in the head and burned. He claimed that similar treatment had

been meted out to another "Askari", Isaac "Ace" Moema, "because he was always reserved - his heart wasn't in his job". Mr. Coetzee said that he had not participated directly in this case, as others had been assigned to it.

123. The Harms Commission published its findings on 22 November 1990. It concluded, inter alia, that there were no hit squads in the police and no evidence that the CCB had been responsible for the murder of Dr. Webster, although the Commission had established that the CCB had been involved in other crimes of violence.

124. In a press statement issued following the release of the report on the findings of the Harms Commission, the Independent Board of Inquiry into Informal Repression stated, inter alia:

> "The Board believes that Judge Harms has chosen to ignore aspects of evidence that was placed before him of a police squad that operated beyond the law and committed a series of brutal and shocking acts. (...) Judge Harms in his report finds that the police version is false. He leaves it there. Judge Harms does not deal with:
>
> 1. the fact that there was obviously a conspiracy at the highest level in the security police;
>
> 2. the consequences of a senior officer perjuring himself in the witness box;
>
> 3. the fact that this incident is evidence of the operation of a 'hit squad' ...
>
> ... This Board believes that there is a danger that this report will be used by the Government to close the door on future investigations into the unlawful conduct of its security forces.
>
> Furthermore, it is the opinion of this Board that to give the South African Police a clean bill of health in relation to the extremely serious issues which were placed before the Harms Commission is both incorrect and has unfortunate consequences for justice in South Africa."

125. On behalf of the Independent Board of Inquiry into Informal Repression, a board member submitted the following:

> "The future role of the Independent Board
>
> "What is becoming increasingly evident to the Independent Board is the sinister role which is presently being played by certain elements within the Security Forces to make the country ungovernable. Although the CCB structure has been closed down by the State President and although the Department of Law and Order deny the existence of a police death squad, we detect the emergence of a paramilitary hit-squad culture within certain elements of the South African Security Forces. It is our considered opinion after extensive research and consultation with many recent victims of township violence, that there is developing within the

Security Forces an extra-parliamentary political movement with its own political agenda, which is certainly not in any way similar to State President de Klerk's agenda. It is particularly frightening that this political movement has access to arms, ammunition and the South African Security apparatus. Unless it is exposed and neutralized by the South African Government, this country has little prospect of surviving the process through which it is going. The Independent Board is one of the few organizations with the infrastructure and the expertise to expose these awesome events before it is too late."

D. Capital punishment and executions

126. At the 794th meeting of the Working Group, the representative of Lawyers for Human Rights referred to the question of capital punishment, and informed the Group that his organization had been largely responsible for the important decrease in executions in 1989. By monitoring every single case on death row, it had been able to prevent about 30 per cent of the executions through court action on behalf of condemned prisoners who had not exercised all their rights. He said that Lawyers for Human Rights had approximately 200 instructions to make representations to the newly created panel which is to hear appeals on behalf of condemned prisoners.

127. It was reported in the Weekly Mail of 27 to 29 January 1990 that the moratorium on the death penalty announced by President F.W. de Klerk on 2 February had been debated by the parliamentary Standing Committee on Justice. The proposed Criminal Law Amendment Act, gazetted in July 1990, abolished mandatory death sentence in the absence of extenuating circumstances. A trial judge in the case of a murder trial was given judicial discretion to impose a death sentence after considering mitigating and aggravating factors.

128. Under the amended law, a person sentenced to death is given an automatic right of appeal to the Appellate Division without the necessity of obtaining leave to appeal from the trial judge. The conviction and sentence are reviewed by the Appellate Division, which is empowered to impose a different sentence if it believes the original sentence to be unreasonable but also if it would not itself have imposed the death sentence. This clause was passed despite heavy opposition led by Cape Judge President Mr. Justice George Munnick and supported by all other provincial judge presidents, with the exception of Mr. Justice Smuts of Orange Free State.

129. If the Appellate Division confirms the sentence, it is possible to petition the State President for mercy. If this is not done by the prisoner, a lawyer will be automatically appointed to submit the petition.

130. Regional court magistrates have been given the jurisdiction to pass sentences of up to 15 years in murder cases. The death sentence will not be passed on persons who were under the age of 18 at the time of their crime.

131. Persons sentenced to death before the Act was passed will have their sentences reviewed by a panel of experts, to be appointed under the terms of the new Act. The panel will use the provisions and criteria of the new law

for the purposes of the review. If the decision confirms the original death sentence, the case will be submitted to the State President for the exercise of his prerogative of mercy.

132. If the panel decides against execution, the case will be referred to the Appellate Division for an alternative sentence. The Working Group has not been able to evaluate the impact of the new measures because detailed provisions concerning their implementation have not yet been set out.

E. Detention, including conditions of detention

133. It was reported in The Independent of 22 May 1990 that Mr. Glen Thomas, a fieldworker for the Grahamstown Rural Committee (GRC) in South Africa had been detained on 11 May 1990 and was being held under Section 29 of the Internal Security Act. Although a police statement referred to a criminal investigation, Mr. Thomas was not being held under the Criminal Procedures Act and allegedly had not been charged with any offence. The GRC is supported by Oxfam in its work with rural communities threatened with, or suffering from, forced removal or incorporation into the so-called independent "homeland" of Ciskei and the border regions. Mr. Thomas was also chairperson of the National Land Committee, which Oxfam supports through its five affiliate organizations engaged in similar work across South Africa.

134. At its 794th meeting, the national director of Lawyers for Human Rights, who is also a member of the Independent Board of Investigations into Informal Repression, testified before the Ad Hoc Working Group. He said that the vast majority of the provisions set out in the Universal Declaration of Human Rights were violated in South Africa, despite the present political reform initiatives which were under way, because the policy of apartheid was still intact. Under Section 29 of the Internal Security Act, detention without trial was still being used as a repressive measure. He said that, although President F.W. de Klerk appeared committed to a genuine change, the question of preventive detention had not yet been addressed. He informed the Group that, according to information received in the previous two months, Section 29 detainees continued to be tortured. If members of Inkatha or right-wing organizations were arrested under Section 29, they were detained for very short periods of time. On the other hand, ANC and South African Communist Party members were held indefinitely. The witness also informed the Group that evidence had been received which showed that whites were participating in the unrest in the disputes between Inkatha and others, and that it was not a "black on black" conflict between Zulus and Xhosas.

135. Although it had been agreed on 6 August 1990 in the Pretoria Minute that the release of political prisoners would start by 1 September 1990, the question had not yet been seriously addressed. The witness referred specifically to the cases of Mr. "Mac" Maharaj, who had been detained while covered by a legal Government indemnity, and Mr. Chris Hani and Mr. Ronnie Kesrils, whose names had been omitted from the list of persons who had returned to South Africa under a Government indemnity from arrest or detention expressly for the purpose of constitutional negotiations.

136. According to information received from the South African Human Rights Commission, as at 31 August 1990 there were 109 detainees being held under Sections 29, 31 and 50 of the Internal Security Act, 12 in the Transkei under the Public Security Act, and 33 in Bophuthatswana under state of emergency regulations. As the Working Group has stated above, the so-called "homeland" of Bophuthatswana continued to be under a state of emergency at the time of writing of this report.

F. Cases of torture and ill-treatment

137. At its 778th meeting, a 21-year old student at Cape Town University described how he had been picked up on 4 March 1989 from his home in Kukuletu and taken to Culembororg Building, Foreshore Cape Town, where he was beaten all over and given electric shocks. He retained scars on his face, allegedly as the result of the torture to which he had been subjected. He stated that he had been tortured by Warrant Officer Seki Steenkamp, one of two white officers, and a black police officer called "Patrick". He was released on the third day following his arrest. On 11 March 1989, he was picked up again and taken to a police station in the Transkei called Parmeitfontein, where he was interrogated by Warrant Officer Sicelo Seleke. When he refused to sign a statement which said, inter alia, that he belonged to the Pan Africanist Congress (an organization banned before the witness was born), he was taken to Aliwel North Police Station in the Northern Cape Province since, as a South African, he could not be retained in Transkei. After about one week he was released and taken back to Cape Town.

138. During the 777th to 783rd meetings held in Dar-es-Salaam, a total of 29 witnesses appeared before the Ad Hoc Working Group, including several under the age of 18 and one of 12 years old. Most witnesses claimed that they had been severely tortured and gave details of the places where this had taken place and the names of the persons involved (see chapter V).

G. Political trials

General

139. It was reported in The Times of 9 October 1990 that, following agreement between President F.W. de Klerk and Mr. Nelson Mandela, indemnity against prosecution or civil action for "political offences" would apply to acts committed before noon on 8 October 1990. This was the first time that a specific cut-off date had been agreed. However, Mr. de Klerk indicated that no pending or current legal proceedings would be suspended under the announcement, nor would indemnity for anyone or any event or offence be granted automatically.

140. It was reported in The Independent and The Guardian of 30 October 1990 that Mr. "Mac" Maharaj, a national executive member of the ANC held by police since July under Section 29 of the Internal Security Act, had been charged on 29 October 1990 together with eight members of the ANC military wing, with planning to overthrow the Government.

141. The International Herald Tribune of 11 October 1990 reported that 21 political prisoners, most of whom belonged to the African National Congress (ANC), had been released. Eighteen men were freed in Cape Town and three from prisons in Johannesburg and Pretoria.

II. APARTHEID, INCLUDING BANTUSTANIZATION AND FORCED POPULATION REMOVALS

A. Apartheid

State policy

142. It was reported in The Times of 21 April 1990 that Dr. Gerrit Viljoen, Minister of Constitutional Development, predicted that Pretoria would reach agreement with black leaders on a new constitution within two years. Referring to the scheduled talks set for 2 May 1990, he said it would be mainly a "getting to know you" session, to be followed by lengthy "talks about talks" on the preconditions set by the ANC for full-scale talks. It was further reported that the Minister of Constitutional Development emphasized that Pretoria's priorities were local autonomy first and group rights second. The regions would replace both the existing so-called "homelands" (apart from the four which were considered "independent") and the white areas, and would have control over their own judicial systems and police.

143. As has been mentioned earlier (see para. 41), The Times of 1 May 1990 reported that on one side of the negotiating table was a nine-member delegation composed exclusively of white, male Afrikaaners aged between 43 and 63, reflecting the authority of a conservative minority which had ruled the country for almost 50 years. On the other, the ANC fielded a multinational team of men and women ranging in age from 33 to 78. Its delegation, dubbed the "Rainbow XI" by the local media, comprised seven persons classified as black, two whites, an Indian and a coloured (mixed race). For good measure, one of the whites was anglophone and the other Afrikaans-speaking. The ANC thus made a discreet point: it embraced all ethnic communities while the governing National Party remained rooted in its racist past.

144. It was reported in The Times of 2 May 1990 that the talks were expected to deal with issues essentially peripheral to the important question of creating a new constitutional future for the country. The meetings reportedly centred on the question of how the ANC preconditions for full-scale negotiations could be met as well as the Government's demand that the liberation movement formally abandon the "armed struggle".

145. It was reported in The Guardian of 2 May 1990 that preliminary talks between the Government of South Africa and the African National Congress (ANC) had commenced on 2 May 1990 and had continued for three days. They were held at the Groote Schuur Museum which, until six years ago, had served as the official residence of South Africa's Heads of State. At the conclusion of this meeting the "Groote Schuur Minute" (see annex I) was released on behalf of both parties.

146. A Bill was approved by Parliament on 8 May 1990, empowering Mr. de Klerk to grant either temporary or permanent indemnity to exiles taking part in negotiations with the Government. It was designed to facilitate talks with the ANC and also applied to persons who had committed offences against members of the ANC and other formerly banned organizations.

147. The Government Gazette Volume 299, No. 12489, issued in Pretoria on 19 May 1990, stipulated that the Acting State President, under powers vested in him by section 1 (1) of the Indemnity Act, 1990 (Act No. 35 of 1990), granted unconditional immunity as referred to in section 1 (2) of the aforementioned Act for the period 19 May through 19 August 1990, to 38 persons specified in an attached schedule (see annex III) including Mr. Chris Hani, Mr. Ronnie Kasrils and Mr. "Mac" Maharaj. These three names were omitted from the 20 August 1990 Government Gazette renewing the unconditional immunities.

148. While the Working Group welcomes the agreement reached between President de Klerk and Mr. Mandela in terms of the "Groote Schuur" and the "Pretoria" Minutes, the Group considers it a breach of faith on the part of the South African Government to have detained Mr. "Mac" Maharaj on 24 July 1990 and allegedly tortured him while in detention under Section 29 of the Internal Security Act. The Working Group condemns the failure of the Government to renew the indemnity accorded to members of the national executive committee of the ANC, Mr. Chris Hani and Mr. Ronnie Kasrils in August 1990, when it expired.

149. The Working Group condemns the omission of the names of Mr. "Mac" Maharaj, Mr. Chris Hani and Mr. Ronnie Kasrils, senior members of the national executive committee of the ANC, from the list which renewed the indemnity given to other ANC members in August 1990 (see annex III).

150. It was reported in The Times of 9 May 1990 that the South African Government was abolishing racially segregated local authorities and devolving considerable powers to a new system, to be determined largely at the local level. The announcement was made by President de Klerk to the congress of the Cape Municipal Association on 8 May 1990. The present system of local government consists of councils conducted by separate black, white, Indian and coloured (mixed race) persons. The new system appeared to be designed to replace the previous local councils with multiracial bodies, as a safeguard against the whims of the governing party.

151. It was reported in The Independent of 11 May 1990 that Dr. Viljoen, acting President of South Africa in the absence of Mr. F.W. de Klerk, had announced the Government's determination to renounce apartheid and to replace it with a political system of qualified, democratic, majority rule. He further clarified his statement by adding that the qualifications placed on majority rule would not be "a permanent principle", thus holding out hope for the decades-old demand of the ANC for "a non-racial, democratic and united South Africa".

152. As regards the ANC's demand for "unitary" (as opposed to the currently partitioned) South Africa, Dr. Viljoen was unequivocal. "In the new context, the former almost exclusive emphasis on differences and separate groups in the population will be replaced by the acceptance of one undivided South Africa and emphasis on one common nationhood ... We accept a nationalism embracing all South Africans, irrespective of race", he said.

153. As stated in paragraph 43 above, the Government imposed new measures to control the renewed violence which, taken together with the provisions of legislation such as the Public Safety Act and the Internal Security Act, the

new provisions made on 24 August 1990 have resulted in hardships which compare with those under the worst conditions of the state of emergency imposed in South Africa (see chapter I, para. 74 et seq.).

154. It was reported in The Guardian of 15 May 1990 that a second raid on a military armoury had taken place during the weekend of 12 to 13 May 1990. According to police disclosures, the raiders had broken into a strongroom at a commando base south of Johannesburg, taking nine R-1 assault rifles, five 9-millimetre pistols and thousands of rounds of ammunition. This followed a similar operation in Pretoria in April 1990, when a substantial number of arms was stolen from the air force headquarters. Three national servicemen arrested for involvement in the raid were reported to have said that a well-known right winger and former city councillor in Pretoria, Mr. Piet Rudolph, had told them the operation had been authorized by the army. He had said that the weapons were to be supplied to the Zulu movement "Inkatha", for use against the ANC and the United Democratic Front (UDF). Mr. Rudolph was alleged to have masterminded the raid and was reported to have said that the stolen weapons were for use in a "counter revolution".

Main pillars of apartheid

155. In a letter dated 11 September 1990 addressed to the Secretary-General of the United Nations, the Minister of Foreign Affairs of South Africa stated, inter alia, that, as a result of initiatives taken on changes in apartheid laws, "... Only three major areas remain: the Population Registration Act, the Group Areas Act and the Land Acts".

"Petty" apartheid

156. The Reservation of Separate Amenities Act was repealed in June 1990, after 37 years on the statute books. Communities were given until 15 October 1990 to take steps to comply with the terms of the repeal. Instead, several town councils controlled by the Conservative Party planned to continue segregation through a variety of means, which included levying charges beyond the reach of blacks for facilities and restricting their use to persons paying local property taxes, who, by definition under the remaining apartheid law which segregates residential areas, must be white.

157. It was reported in The Independent of 16 October 1990 that, in practice, the effects of this repeal would be felt more in the rural areas than in the large cities. In Johannesburg, Cape Town, Pretoria and Durban, local councils had passed legislation in 1989 enabling all races to share public amenities and for months, blacks and whites had been mixing freely in Johannesburg swimming pools, libraries and buses.

158. The Weekly Mail of 26 October to 1 November 1990 reported that three Wesselton youths were attacked and beaten up by armed, truncheon-wielding whites on 22 October 1990, while they bathed in the recently integrated Ermelo swimming pool. One of the three, Fred Mofokeng (22), was reportedly in danger of losing the sight in his left eye. It was claimed that Gideon Coetzee had summoned a group of whites and that, together, they had attacked the three blacks. Mike Ngewenye (18) suffered bruises, but Lucky Mathibela (18) managed to escape. When Mofokeng was taken to the local police station, it was

alleged that no statement was taken from him and that later, treatment was refused in a hospital until the following day, when black nurses were available to attend to him.

159. It was reported in The Times of 15 October 1990 that, although the Reservations of Separate Amenities Act, repealed by Parliament earlier in the year, legally became operative as from 15 October 1990, certain town councils in South Africa were exploiting legal loopholes to discourage blacks from using public amenities. It would appear that although most local authorities would comply, about 102 local councils in the Transvaal controlled by the Conservatives reportedly were planning to impose high entrance fees for "non-residents", which would exclude nearly all blacks, since the Group Areas Act was still in force.

Financial repression

160. As mentioned by the Working Group in its interim report, after abortive attempts in 1988, a new funding act was introduced in 1989. This Act, known as the Disclosure of Foreign Funding Act No. 26 of 1989, came into operation on 18 August 1989. If an organization is declared a "reporting organization" under this Act, it has to inform the Registrar of Reporting Organizations when it receives overseas funding, who has supplied the money, for what purpose and under what conditions. The Registrar has been given the power to go, unannounced, to an organization and seize any documents he wishes to see. He can also summon officials of an organization to come and give information (see E/CN.4/1990/7, para. 113).

161. Subsequently, four organizations were notified that they were under consideration for being declared reporting organizations. The effect of such a declaration would be to compel, administratively, the disclosure of confidential information of interest to security police or other government agencies, thereby exposing the organizations or persons to other actions (see: South African Human Rights Commission Review of 1989, March 1990, in association with the Centre for Applied Legal Studies, University of Witwatersrand, Johannesburg).

162. Under the Disclosure of Foreign Funding Act, the Wilgerspruit Fellowship was declared a reporting organization in January 1990. This is the first organization to be declared a reporting organization. (see: South African Human Rights Commission Update, January-February 1990, Vol.3, No. 1, March 1990.)

163. As already noted in the Working Groups previous reports, the National Union of South African Students (NUSAS) and the United Democratic Front (UDF) are still "affected organizations", i.e. they may not receive foreign funding under the Affected Organizations Act.

B. Opposition to the policy of apartheid

164. As related in the Working Group's previous report (E/CN.4/1990/7, paras. 123 to 125), in 1989, the then Lt. Gregory Rockman (30), a coloured official of the crime-prevention unit at Mitchell's Plain with 12 years of service in the force, had publicly condemned white policemen for attacks on

persons on election day, 6 September 1989, which led to at least 23 deaths and about 100 injured. Lt. Rockman was arrested in November 1989 and subsequently left the force.

165. According to a report in The Guardian of 21 May 1990, Mr. Gregory Rockman, now the national president of the Police and prisons Civil Rights Union, said in London during a three-week European tour to raise support for his union, that he refused to be intimidated. He had been shot at by another policeman in February 1990, dismissed from the police force in March 1990, arrested several times and charged twice with attending illegal gatherings. It was claimed that the union had a membership of 5,000 black policemen and prison warders, 60 of whom had been dismissed from the police force and more than 800 suspended for having protested in support of the union.

166. On 15 May 1990, five prison warders who were members of the union, including three from the national executive, had occupied part of the West German Embassy in Cape Town, in a protest timed to coincide with President de Klerk's tour of European countries, including West Germany. The five had been among the 650 prison warders suspended without pay in March 1990 after having joined the union. The sit-in ended on 20 May 1990, on the eve of Mr. de Klerk's visit to Bonn, after it was reported that Mr. Kobie Coetzee, the Minister of Justice, had agreed to reinstate the 650 suspended warders.

167. A "News Analysis" article published by the International Herald Tribune of 6 December 1990 reported that, although protests against apartheid were not new, and Mr. de Klerk had tolerated peaceful dissent since taking office, "mass action", as the ANC's policy was called, had become a key point of contention, delaying talks between black and white leaders on a new national constitution. The article reported that the mass action campaign set goals like the non-racial election of a constituent assembly and an interim government during negotiations, and the collapse of black township councils created by Pretoria, goals which are opposed by the Government. It was further reported that the ANC held the view that, "It is asking too much that, having abandoned armed struggle to help facilitate the process of negotiations, the ANC must now be expected to give up its sole legal and legitimate means of organizing".

168. The Independent of 7 December 1990 reported that some 25,000 ANC supporters had marched through Johannesburg city centre on 6 December 1990. Previously, the Minister of Constitutional Development was reported as having stated that the Government believed protest equalled violence. The ANC countered that it was police aggression at demonstrations that detonated violence. On 6 December the ANC scored a point. The police were clearly under orders to behave with restraint and, although armed with guns, rifles and tear-gas cannisters, held themselves at a discreet and unprovoking distance. The march ended at John Vorsters Square police station, where a petition was presented calling for the Government to honour certain promises which it had made but had not been forthcoming. Among the speeches was one by ANC national executive member "Mac" Maharaj denouncing the Government's rejection of mass protest. After some singing and dancing, the crowd dispersed peacefully. At the time of writing this report, the Working Group had no other source of information concerning the possible release of Mr. "Mac" Maharaj.

C. Bantustanization and forced populations removals

169. Contrary to the stated policy of the Government of South Africa, on 13 June 1990, the Mier Rural Areas Bill was passed. If this Bill is gazetted and becomes law, it is reported that 5,000 residents of the "coloured reserve" of Mier, also known as Rietfontein, in the district of Gordania in Northern Cape, will be dispossessed of their land.

170. Under the proposed legislation, the Minister of Housing and Local Government in the House of Representatives has the power to sell land which he is supposed to hold in trust for the community. It also seeks to validate, with retrospective effect, the past unlawful actions on the part of the Management Board and the Minister in dividing the area into grazing units and selling it. 1/

171. The Ad Hoc Working Group of Experts has noted the contradiction between the stated policy of the Government of South Africa and the proposed legislation, as referred to above.

Land Reform

172. It was reported in the Weekly Mail of 14-20 September 1990 that, in a recently published paper entitled "Rights to the land: a fresh look at the property question", the ANC expert Albie Sachs advocated a single or national law to govern the question of land, which would embrace human rights principles. He pointed out that there were two completely different and unequal sets of land laws in South Africa. For whites, land law is based on private property, registration of transactions in relation to land ownership proven by certificate of title and demarcated plots. Land may be leased or used as security for loans by means of mortgages. The property owner is sovereign. This control over land grants white landowners a "double sovereignty" which includes control of persons on the land.

173. By contrast, black land is State-owned and controlled. Access to such land is governed by a system of grants, rigid laws of succession and supervision by Government-appointed or recognized chiefs. In the so-called "homelands", the largest landowners are the so-called "homeland" governments themselves and the South African Development Trust. The title to much tribally owned land is in the name of so-called "homeland" government ministers. The majority of bantustan residents are tenants. Occupiers may grow food on tribal land, erect houses and, subject to controls, keep livestock on it.

174. Black persons on white land remain there at the precarious goodwill of the owner, at whose whim a black farmer born on the land (as were his parents before him) may be turned into a squatter or trespasser.

1/ Surplus People Project, Fact Sheet No. 9 of June 1990.

175. After a meeting between cabinet ministers, parliamentarians, leaders of the so-called "homelands" and provincial administrators on 1 October 1990, President de Klerk announced at a press conference that non-racial funding for agriculture would be provided for in the next budget. It was further reported in The Guardian of 4 October 1990 that the Government would adopt preventive measures to protect tribal land from being seized by white speculators. The Government of South Africa has, however, made concessions to the so-called "homeland" leaders regarding tribal ownership of land that will be phased out over a period of time. Further, when President de Klerk was asked at a press conference on 2 October 1990 whether persons previously dispossessed of land would be given first option to acquire land, he said existing title-holders would not be affected by the decision to scrap the Land Acts.

176. The Weekly Mail of 5-11 October 1990 reported that the Government intended to repeal the Land Acts of 1913 and 1936 in 1991. The 1913 Act set aside 7 per cent of the country for black occupation and the 1936 Act extended it to 13.6 per cent - effectively, that area of the country comprising the so-called independent and self-governing "homelands". If this legislation is repealed, subject to the Group Areas Act, black South Africans would be entitled to purchase farm land throughout the country instead of in a mere 14 per cent. The National Land Committee (NLC), whose constituent organization spearheaded the fight against forced removals, made it clear that removing apartheid legislation is not enough: the apartheid legacy must be addressed. Although the right to buy land would be given to black South Africans, they would not have the ability to buy land or to use it productively because for over 40 years, black landowners have been forcibly removed, inadequately compensated, and banished to barren, unproductive resettlement camps. Suddenly, their ancestral land is liable to go to the highest bidder, since they have no means to buy it themselves.

Forced removals and the plight of farm workers

177. According to an Oxfam report entitled "We Cry for Our Land", which was launched recently in London, six million black farm workers live under inhumane conditions in South Africa. The report states that, even under the country's repressive apartheid systems (farm labour in South Africa is particularly exploitative and anachronistic), the law does not give the labourers any guarantees of paid sick leave or holidays. Neither are they granted minimum wages or overtime payments. Furthermore, farm workers are subjected to a system of labour tenancy under which they are allowed access to some agricultural land in return for spending half their time working for white landowners.

178. The report cites an incident in February 1990 in the Kei Road area of Eastern Cape, where 36 persons were evicted after the farm on which they had lived for many years changed hands. It also gives statistics for average monthly wages for 1988 in which black farm workers earned R201 compared to black miners (R500), those in manufacturing (R786) and in finance (R1,555). The wages for white workers were R1,715, R3,000, R1,742 and R2,464, respectively.

179. A representative of the National Land Committee (NLC), testifying before the Ad Hoc Working Group at its 795th meeting, said that there is progress in the process of change in South Africa. Over the previous year, it had become considerably harder for the South African Government to remove forcibly large rural communities. Eighteen to twenty of these, which would previously have fallen under the threat of removal, were now secure. However, they were now faced with another problem.

180. Under South African law, farm workers were not covered by any protective labour legislation under the Industrial Conciliation Act or the Employment Act. Thus, they were reported to be perhaps the most vulnerable and defenceless part of the work-force in the entire country. The witness further reported that there had been an increase in evictions of farm workers. As a result of amendments to the Illegal Squatting Act in 1988 and 1989, arbitrary evictions without recourse to law were more easily carried out. Resistance led to farm workers and their families being subjected to brutal assaults, murder or arrest. This brutality and violence was reported to have greatly increased, especially since the unbanning of the ANC and the political changes advocated by the Government since February 1990.

181. The witness pointed out that, according to recent information, only 20 per cent of white South African farmers produce 80 per cent of the food. The other 80 per cent are not very productive. The Government subsidies and loans previously given to them at low interest rates would be difficult to justify in the future. This situation, together with the political changes which are on the horizon, was, in the opinion of the witness, a potential danger which could lead to the polarization of white farmers. Violence could not be ruled out.

182. The witness made specific reference to the forcible removal of the Bakwene be Mogope tribe from the Ventersdorp farm in February 1984, since which time the tribe had carried out an unceasing battle to regain its land. Its persistent efforts and refusal to accept the decision to dispossess it had led to many court hearings, which the people of Mogope lost. On 24 August 1990, when their case was to be heard in the Appellate Court of Bloemfontein, the presiding judge suggested that the two teams of lawyers negotiate a settlement out of court. In the interim, a status quo was to be maintained. No new settlers would be allowed to stay at Mogope and no new buildings could be erected. The court would reconvene to consider the case of the Mogope people on 20 November 1990. Although they had lost their case throughout, the Mogope people could still hope to regain their land through negotiation.

183. In testimony given to the Working Group at its 792nd meeting, a representative of the South African Council of Churches (SACC) referred, inter alia, to the protracted struggle of the people of Mogope and reported that they had appealed against the previous decision of the Pretoria Supreme Court in May 1989, when it was ruled that the arguments raised by the people of Mogope were inappropriate in cases of eviction, and therefore irrelevant. The Government's right to evict was therefore held to be valid. However, in

the face of Government opposition and in keeping with current political thinking, implementation had been delayed, especially as the legal provision under which they were evicted has reportedly since been repealed.

184. The same witness also referred to the brutal and slave-like conditions of work to which farm workers were subjected. He related an incident which took place on 5 November 1989, involving 11 young men aged between 17 and 20, who had been hired in Shaleng and Madipalesa, Bophuthatswana, to work on a fruit farm in Parys for six days per week at a wage of 4 Rands per day. On the night in question, they were woken up by the farmer for whom they worked and told to help put out a fire on a neighbouring farm. When they refused, they were threatened by the farmer and his three sons, and so, went reluctantly to the adjoining farm to help. An eyewitness, Mr. Mathomola Motlheping, who was with the group, allegedly saw the white farmer and his sons creating another fire behind them. Soon they were encircled by fire and four of them were burned to death. Five managed to escape. The two others, together with Mr. Motlheping, were taken to Boitumelo Hospital in Parys, where they were treated and later transferred to a hospital in Bophuthatswana. They never received any wages for the work they had done.

185. The Weekly Mail of 23 to 29 November 1990 reported that concern was growing over the disappearance of family members of 15 farm labourers who had walked 120 km through the night from Langkloof Farm, Misgund, to seek help from the Port Elizabeth Black Sash office after a dispute with the owner of the J. Baldie & Sons farm. The dispute reportedly arose when the farmer ordered the labourers back to work without their having been able to eat lunch.

186. The labourers, who had been recruited at the Hofmeyr offices of the Department of Manpower, alleged that they had been tricked into going to the farm in the first place. They were paid R8 per day and at the end of a week, R10 was deducted for a breakfast of pap and soup, and a lunch of samp and beans, measured out in a plastic cup. Dinner was not provided. In addition, they had to pay R15 for the loan of matresses and were charged for the petrol used in going to and from work. Their complaints to the farmer about the poor food and the deductions were ignored.

III. RIGHT TO EDUCATION, FREEDOM OF EXPRESSION, FREEDOM OF MOVEMENT AND RIGHT TO HEALTH

A. Right to freedom of expression

187. An analysis of the information received by the Ad Hoc Working Group shows that, although President de Klerk announced the intention to relax the curbs previously imposed on the freedom of the press, followed by, for example, the lifting of the prohibition on all International Defence and Aid Fund (IDAF) publications, the situation as regards freedom of the press and especially the protection of journalists is by no means safeguarded. On the contrary, it is greatly impeded and restricted by permanent laws, more than 100 in number at the present time, which affect publications in South Africa. The following are a few of the enactments which are utilized to curtail freedom of the press, as presented by the representative of the non-governmental organization known as "Article 19" in her oral and written testimony during the 775th meeting of the Working Group in London.

"Permanent laws

"Despite the Government's moves towards more freedom of political expression and for the mass media to relay, and comment on, current political developments, the formidable code of permanent censorship laws remains untouched and threatens the gains that have resulted from the scrapping of the emergency restrictions.

"Internal Security Act (ISA): Despite the unbanning of the ANC and the SACP, existing laws nevertheless curtail the ability of both organizations to propagate their message openly and lawfully. It remains an offence under the ISA, punishable by up to 10 years' imprisonment, to advocate, advise, defend or encourage the achievement of any of the objectives of communism. 'Communism' is extensively defined and includes 'any doctrine, ideology or scheme which is based on, has developed from or is related to the tenets of Karl Marx, Friedrich Engels, Vladimir Lenin or Mao Tse Tung, or of any other recognized theorist in connection with, or exponent of, those tenets, and which aims at the establishment of any form of socialism or collective ownership'. The ANC and the SACP (which re-launched itself openly in South Africa in June 1990) cannot, therefore, lawfully advocate nationalization and other policies for which they have long campaigned.

"This Act also makes it a serious offence to incite or commit an act of civil disobedience; and despite the removal of the prohibition on subversive statements which included calls for civil disobedience, it remains a crime. It also contains the powers to ban organizations and to 'list' and thereby silence individuals, through house arrests and banning the publication of their names, statements or writings.

"The Publications Act: The Publications Act, under which literally thousands of publications and books have been banned on the basis that they constitute a 'threat to the security of the State, the general welfare and the peace and good order', continues to regulate all publications (except newspapers which are members of the Newspaper Press Union), including those of previously unlawful organizations.

"The official publication of the SACP, The African Communist, as well as the official publication of the ANC, Sechaba, were banned in perpetuity, but have recently been unbanned. Similarly, although the London based anti-apartheid International Defence and Aid Fund for Southern Africa is now a lawful organization, a decision was taken in 1980 under this Act whereby none of its publications could be imported into South Africa, except on the authority of a permit. Not all of its publications were banned but many of those that were have now been unbanned.

"The 'alternative' press has the most to fear from this statute, since these publications are not affiliated to the Newspaper Press Union. In the past, community newspapers such as Grassroots, South and New Nation have been victims of banning under the Publications Act.

"Nevertheless, the Publications Board established under the Act has developed an indeperdent and increasingly liberal approach towards censorship in recent years. One reason advanced for the emergency censorship restrictions in 1987 was alleged concern over the Board's policies which had led to the unbanning of a number of newspapers, journals, books and films. In 1988 security police confiscated copies of the film 'Namibia: No Easy Road to Freedom' and all copies of the film 'Cry Freedom' under the 1987 Media Emergency Regulations. Both films had been passed by the Publications Board.

"Newspaper and Imprint Registration Act 1971: This Act requires all newspapers to register and for registration to lapse if a newpaper fails to come out once a month. Under the Internal Security Act, a newspaper must deposit up to R40,000 with the Government if the minister of justice believes it may be banned at any stage. This is clearly designed to discourage the registration of small opposition newspapers. In 1988 an Eastern Cape news agency was forced to abandon plans to start a newspaper when the minister demanded a R40,000 ($US 15,600) deposit, and the device was recently used against two other publications, The New African and Vrye Weekblad.

"Police Act 1958: Section 27B of this Act prohibits the publication of any untrue statement concerning the action of the police and makes such publication a criminal offence. The onus is on the publisher to prove the truth of any statement and the offence carries a maximum fine of R10,000 ($US 3,900), five years' imprisonment or both.

"Prisons Act 1959: It is an offence to publish 'any false information concerning the behaviour or experience in prison of any prisoner or ex-prisoner or concerning the administration of any prison, knowing the same to be false or without taking reasonable steps to verify such information'. Again, the onus of proving that reasonable steps were taken to verify the truth of the information in question lies with the publisher.

"Defence Act 1957: Section 118 of this Act prohibits the disclosure of any information, by any means of publication, of the composition, movements or disposition of the South African Defence Force or Navy or any of its equipment. The Act prohibits the taking of photographs and making sketches of military premises or installations. It is also an offence to use any language or to act with intent to encourage any other person to refuse to do military service.

"It is equally an offence to publish any statement, comment or rumour relating to any member of the defence forces calculated to prejudice or embarrass the Government in its foreign relations, or to alarm or depress members of the public unless the Minister of Defence authorizes such publication.

"Protection of Information Act 1982: This Act prohibits the obtaining and disclosure of certain information to any foreign State or hostile organization. The Act defines 'security matters' very broadly as any matter dealt with by the National Intelligence Service. It also

prohibits the possession of certain official documents which may be prejudicial to the security of the Republic. The Armaments Development and Production Act 1968 prohibits the disclosure of any information relating to the acquisition, manufacture, or marketing of armaments and associated technology, except with the consent of the Minister.

"Disclosure of Foreign Funding Act: Under this Act, which came into effect on August 1989, any organization or person thought to be receiving funds from abroad can be declared a 'reporting' organization or person. This requires the disclosure of the amount and source of external funding and for what purpose it is to be used. There are penalties of R40,000 and/or up to 10 years' imprisonment for failure to comply with the provisions or for using foreign funding for a purpose other than the one declared to the registrar. The Wilgespruit Fellowship Centre was declared a reporting organization in January 1990 and several others are under consideration."

188. At its 772nd meeting, the Ad Hoc Working Group received testimony from a representative of the International Federation of Journalists (IFJ), with specific reference to the Prisons Act, the Defence Act and the Police Act, which adversely affect the way in which journalists may report and comment on matters of vital public interest. She also referred to repression against journalists in the form of bombing newspaper offices, intimidation of journalists and denial of visas to foreign journalists.

189. Furthermore, according to written information submitted by the representative of article 19, the subject of the arrest of journalists and other restrictions on their freedom of movement was addressed as follows:

"On February 6, 1990, Paul Weaver of the Today newspaper, and Gareth Furby of Independent Radio News, a British radio news service, were expelled from South Africa, where they had been reporting the disturbances surrounding the English cricket tour, by order of the Home Affairs Minister Gene Louw. Mr. Weaver was told that his work was 'emotionally laden and exaggerated'.

"On February 8, 1990, in Alexandra township outside Johannesburg, journalists reporting upon the disturbances surrounding the English cricket tour were arrested by the police. They were accused of encouraging residents to demonstrate.

"On February 9, 1990, at an African National Congress meeting in Johannesburg, police lashed out at journalists and participants. Carole Simpson of ABC was injured when she was hit on the back by a police baton.

"On February 11, 1990, Mike Sullivan and Meshack Mokoena of CBS were wounded when birdshot was fired in a random manner by the police at a rally in Cape Town to welcome Nelson Mandela's release from prison.

"On February 11, 1990, police fired shots at the reporter Patrick Zachmann of Magnum, who had been covering the release of Nelson Mandela. Zachmann was hospitalized in Groote Schuur hospital with hand and knee injuries.

"On March 26, at a march in Sebokeng in which three were killed instantly when police opened fire, police confiscated film belonging to journalist Len Kumalo of The Sowetan.

"On April 4, Gisle Rabenheimer, a Daily Dispatch journalist, was detained for 24 hours at a demonstration by the Police and Prisons Civil Rights Union in East London.

"In May, the police seized the film of photographer Mbuzeni Zulu, who had taken photographs at the funeral of an exiled ANC member on May 25.

"On July 24, journalists were prevented from entering a section of Lonehill squatter camp where shacks were being bulldozed. The journalists were told that they could not enter the area as they would be trespassing."

190. Further, the same witness referred to the prosecution of journalists, as follows:

"On April 12, two journalists, Sithembele Khala, the general secretary of the Media Workers Association, and Horatio Motjawadi, the sports editor of The Sowetan, were held under Section 29 of the Internal Security Act.

"On May 30, Max du Preez, editor of Vrye Weekblad, appeared in the Rand Supreme Court to appeal against a sentence of six months and a fine of R1,000 suspended for five years. The sentence followed conviction for quoting the listed Communist Party leader, Joe Slovo.

"On June 19, Max du Preez, who already has a conviction under the Internal Security Act, appeared in the Johannesburg Magistrates Court charged under the Protection of Information Act. The charges relate to the paper's allegedly unlawful receipt of a document which was used in an article claiming that the University of Stellenbosch Institute of Soviet Studies had offered to act as a front for the National Intelligence Service. The trial is being held in camera."

191. The same source goes on to quote examples of foreign journalists refused visas or deported.

"In February, Rory O'Connor, a United States journalist and the President of Globalvision, was refused a visa.

"In February and June, Danny Schechter, the executive producer of US television programme 'South Africa Now' was refused a visa.

"On May 2, 1990, Elisabeth Schemla of Nouvel Observateur was denied a visa. No explanation was given for the refusal of the visa.

"In June, Lars Gronseth was refused a visa to work in South Africa. Mr. Gronseth is a journalist working for Afrika Informasjon, a publication of the Norwegian Council for southern Africa. The explanation given by the South African Consul General in Oslo for the refusal of the visa application included reference to the 'general antagonistic and propagandistic contents of Afrika Informasjon'.

"On July 9, Michael Opperskalski was refused a visa to enter South Africa. No official reason has been given for the refusal. Mr. Opperskalski, who runs a news agency in Cologne, was invited to South Africa by the Association of Democratic Journalists."

192. Finally, the same witness testified that:

"On February 17, Police in Ciskei refused permission for a rally at the township's stadium to protest the police shooting of people celebrating the release of Nelson Mandela, at which at least three people were reported to have been killed. The demonstration took place in Duncan Village, and police tear-gassed demonstrators from helicopters.

"On March 27, police opened fire on black anti-apartheid demonstrators in Sebokeng. The demonstrators were marching on the local offices of the Nationalist Party. A reported eight were killed, and 300 wounded.

"On April 10, after permission had been denied by a Boksburg magistrate, several hundred workers who had gathered at Isando station ready to march to a factory in Johannesburg in solidarity with striking workers were baton charged by police.

"On April 20, Ramulotsi Youth Congress demonstrators marching in protest against high rents in the Free State township were shot at by police. Five students were killed.

"On April 21, teachers protesting against these shootings were themselves tear-gassed while marching to the police station in Viljoenskroon. An inquiry into the shootings was launched by the Commissioner of Police.

"On May 22, several marches took place as part of COSATU's 'day of action' on the Labour Relations Act. One hundred and twenty-eight people were arrested during marches in Kempton Park, Spartan and Isando. Tear-gas was fired at 40,000 to 50,000 marchers in Embalenhle near Secunda, and at 200 marchers in Johannesburg.

"On May 23, hundreds of students marching in protest against the shortage of textbooks in Wesselton Township near Ermelo were dispersed by the use of teargas by the police.

"On June 11, it was reported that 29 protest marchers, most of whom were students, were arrested in Carnarvon in the Western Cape.

"On June 25, in Cape Town, a small march by the South African Youth Congress was brought to an end by the arrest of 25 people, including the Peninsula Technikon rector, Franklin Sonn."

B. Right to health

193. It was reported in The Times and The Guardian of 17 May and Le Monde of 18 May 1990, that the Government of South Africa had announced on 16 May 1990 that racial segregation in South African State hospitals was to be abolished. Dr. Rina Venter, Minister of Health, made this announcement to Parliament, saying it would enable the black people of South Africa to have access to 240 hospitals which had not been available to them before.

She added that this measure did not require an amendment to existing laws but could be put into practice immediately. The practice of separation in hospital care dates from British colonial times, but had been institutionalized by apartheid laws passed after the National Party came to power in 1948.

194. However, according to testimony received by the Ad Hoc Working Group at its 774th meeting, it would appear that by allocating hospitals to "own affairs" local administration, which deals with whites only, desegregation in health care was effectively circumvented. Thus, it was alleged, the best equipped hospitals in fact continued to be available exclusively to whites.

195. At its 793rd meeting, the Working Group heard a résumé, presented by a clinical psychologist and member of the Psychiatric Association of Zimbabwe and a sociologist, of a conference which had been held in Harare from 4 to 8 September 1990 on the subject of "The consequences of organized violence in South Africa". After giving the background of the conference discussions, the delegates stated that it had generally been argued by the participants that the root cause of organized violence in South Africa was the system of apartheid, and that its dismantlement would lead to a great reduction in such violence. It was reported that, whereas it was difficult to estimate accurately the consequences of organized violence, it was agreed that, in addition to the socio-economic damage, they were serious, especially in respect of the mental and physical health of those concerned. It was further stressed that, despite the recent moves towards liberalization and reconciliation in South Africa, the real issues had not changed and violence continued on a large scale.

IV. RIGHT TO WORK AND FREEDOM OF ASSOCIATION

A. Situation of black workers

196. At the 771st meeting of the Ad Hoc Working Group, while referring to repression of trade unions in 1989, */ the representative of the International Labour Organisation stated that only 7 per cent of black adults in South Africa completed secondary education and 29 per cent obtained no education of any kind.

197. The witness referred to the prolonged campaign carried out throughout 1989 against the Labour Relations Amendment Act 1988, resulting in many meetings and discussions between trade unions and employers, and a seminar in Harare in May 1990 in which, inter alia, the Congress of South African Trade Unions (COSATU), the National Council of Trade Unions (NACTU) and the South African Employers' Consultative Committee on Labour Affairs (SACCOLA) participated to examine how ILO standards could be adopted in the South African context. Despite a high measure of agreement reached between COSATU, NACTU and SACCOLA, leading to an undertaking by the Government to introduce the agreed changes prior to parliamentary sessions ended this year, the Act was not amended.

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*/ Special Report of the Director-General of the ILO on the application of the declarations concerning action against apartheid in South Africa (ILO Conference, 77th session, 1990, p. 34).

198. A representative of the International Confederation of Free Trade Unions (ICFTU) testified before the Working Group at its 772nd meeting and stated that basic human and trade union rights continue to be denied to black workers, and that freedom of association remains circumscribed by apartheid and security laws.

199. The same witness also referred to the Labour Relations Amendment Act 1988 which severely restricted the right to strike, removed protection against unfair dismissal, limited the right to negotiate in the event of redundancy, and encouraged racially constituted unions, provisions which are all contrary to international labour standards.

200. Referring to freedom of assembly, the same witness reported that on 1 April 1990, the blanket ban on outdoor political gatherings under Section 46 of the Internal Security Act was renewed for the fifteenth year running. Additional provisions curbed indoor meetings, which can include calls for educational boycotts or work stay-aways. Under the Gatherings and Demonstrations Act, gatherings or demonstrations in or near court buildings are prohibited.

201. In early 1990, it was reported by the same witness, protests by black prison warders against racial discrimination and ill-treatment of black prisoners by white prison warders had resulted in the suspension from duty of the black warders. Only some of them were reinstated, and an inquiry was being carried out to determine whether they were fit to remain in prison service. Furthermore, since 30 March 1990, under the Prisons Act, prior permission must be obtained from the Commissioner of Prisons before establishing or joining a trade union. No employee of a prisons department is permitted to participate in trade union activities or show affiliation to a trade union without prior permission.

B. Trade union activities

202. While referring to the continuing harassment and attacks against trade unionists, the ICFTU representative referred, inter alia, to the incidents related below.

203. In the ongoing National Union of Wines and Spirits and Allied Workers' strike, four members were arrested at the beginning of August 1990. The union was unable to obtain information regarding the charges they were facing. The witness also mentioned several cases of arrests during July 1990 under Sections 27 and 29 of the Internal Security Act, as well as lock-outs.

204. Following a work stoppage, 404 members of the Municipal, State and Allied Workers' Union were arrested on 24 July 1990 as they were walking to their union offices for a meeting. The arrested members faced charges of "constituting a danger to traffic".

205. It may be noted here that, in describing a shift in repressive State tactics, a representative of the South African Human Rights Commission informed the Ad Hoc Working Group at its 791st meeting that obscure traffic laws and local by-laws were being utilized for the purposes of repression.

206. Hundreds of members of the South African Commercial Catering and Allied Workers Union involved in picketing during disputes have been arrested.

Although the Labour Relations Amendment Act 1988 is silent on this question, picketers were harassed under obscure municipal by-laws which outlaw advertising without local council permission.

207. It was reported that, in a strike involving the South African Commercial Catering and Allied Workers Union and the Southern Sun Holiday Chain, white schoolchildren were employed and paid wages three times the rate of ordinary workers.

208. It was reported in The Times of 3 May 1990 that Bharagwanath Hospital, the only hospital in Soweto available to the estimated population of over 2 million, had been brought to a standstill on 2 May 1990 by a strike staged by 1,500 non-medical workers demanding "a living wage". The maternity wards had to be closed down and mothers discharged within an hour of giving birth, while the orthopaedic and casualty sections continued to function with very great difficulty.

209. Referring to a mission of the International Confederation of Free Trade Unions (ICFTU) in conjunction with the International Federation of Plantation, Agricultural and Allied Workers Union (IFPAAW), which took place in May 1990, it was reported by the representative of the ICFTU at the 772nd session of the Working Group that, although access to agricultural workers was difficult, it was found that all black South African farm workers are badly paid and ill-treated. The plight of migrant workers was reported to be especially preoccupying. The treatment of workers was no better than that of animals, and they were often assaulted in the presence of their children. The mission concluded that it is imperative that all South African workers be covered by labour legislation and that farm workers (as well as domestic workers and those employed in the public service) be given basic protection.

210. The same witness said that there had been a rise in the arrest and detention of trade unionists since 2 February 1990, and cited numerous cases of trade unionists who had been harassed or detained under the Internal Security Act. For instance, Sithembala Kale, general secretary of the Media Workers Association, was detained in March and April 1990, together with Horatio Motwadi, Winston Mafudi and Fansi Ongawa.

C. Sanctions and disinvestment in South Africa

211. It was reported in the International Herald Tribune of 20 April 1990 that, according to Professor Arthur Jay Klinghoffer, a specialist in oil politics at Rutgers University, the leading suppliers of crude oil to South Africa over the past decade were Saudi Arabia, the United Arab Emirates and Oman. Other Arab states included Qatar, Bahrain, Kuwait and, to a lesser degree, Egypt, Iran and People's Democratic Republic of Yemen. Mr. Klinghoffer claimed that 80 per cent of South Africa's oil imports consisted of Gulf oil.

212. According to the testimonies received by the Ad Hoc Working Group, there was a consensus of opinion that sanctions on South Africa must continue. The witnesses from South Africa were especially insistent on it and said that the black population of South Africa would not call for a halt to sanctions and disinvestment, so long as the "pillars" of apartheid such as the Group Areas Act, Population Registration Act and Land Act were still intact.

V. TREATMENT OF CHILDREN AND ADOLESCENTS

213. It was reported in the International Herald Tribune, The Times and The Guardian of 20 April 1990, that four blacks were killed and several wounded when police opened fire during a demonstration at the Rammulotsi black township, near Viljoenskroon in Orange Free State. According to The Times, the four killed were boys between 13 and 16 years of age while up to 20 youths were wounded when the police fired on the peaceful anti-apartheid demonstration.

214. In the course of its field visit to the front-line States from 20 August to 12 September 1990, the Ad Hoc Working Group received testimonies from 64 witnesses, of whom 12 were adolescents under the age of 18. The Group was distressed that all the adolescents alleged having been subjected to torture while in detention and had fled the country because, even after their release, they had been subjected to harassment and informal repression.

215. At its 781st meeting, the Group received testimony from the youngest witness, a 12-year-old Zulu student from the Natal region, presently in exile. He referred to the dissatisfaction of the children at the school he had been attending due to a shortage of textbooks and other facilities. On 20 July 1989, he stated, the police arrived at the school to disperse the students, who were demonstrating peacefully in protest and were demanding improvements. When they refused to return to their classrooms, the police intercepted some of them as they were waiting for transportation to go back home, and took them into custody. Two of those picked up were Bongani (13) and Chatrakumtat (14). They were taken by military truck to Seearswart Police Station where, according to the witness, they were blindfolded with wet rags and brutally tortured. The witness added that early in 1990 it was learned that they had allegedly died in prison after two months' detention.

216. The witness informed the Working Group that the next day, the students continued their boycott and the police returned to the school and again tried to disperse those present. When the students resisted, the police opened fire and shot three students to death. Their names were Siphiwe, Dumisay and Wiseman. The school was subsequently closed down, with the promise of better facilities and free education. However, when it was reopened at the beginning of 1990, there was no change. The students again protested and the police were called in. They assaulted the students and detained most of them. The witness mentioned Sandile Dlomo (13), who was released in February 1990, and Phumlane Mhlango (15), who was detained on 6 March 1990 and was still reported to be in custody at the time the witness left South Africa.

217. Detentions reportedly continued throughout the month of February 1990, when the witness himself was detained for two weeks. During this time, he was allegedly assaulted with rifle butts by as many as six policemen, punched and kicked. A few days after his release, his home was attacked by Inkatha vigilantes and petrol-bombed. He tried to return to school, but was refused admission to his previous school as well as others to which he applied. The witness left South Africa on 13 March 1990 with the help of his brother.

218. At its 782nd meeting, the Ad Hoc Working Group received testimony from a 17-year-old witness who described events during the state of emergency. Police harassment and pressure during school hours and restrictions on free movement under the emergency led the students to organize demonstrations and class boycotts. On one occasion in March 1986, the police had opened fire and shot at random at the students, causing heavy casualties. Many of the victims, including the witness, were taken to hospital where they were chained to their beds, under permanent guard. Three months later, the witness was taken to a police station and later tried, convicted and sentenced to five years' imprisonment with a further period of three years' suspended sentence. The witness was 13 years old at that time. During part of his imprisonment, the witness said that he was kept with adult prisoners convicted of crimes. Adequate medical attention was not given to his wounds and he was unable to sleep because a light was kept on for 24 hours per day. The witness served part of his 5-year sentence on Robben Island. In July 1989, he left South Africa because he was afraid that he might have to serve the further three years' suspended sentence if he ever happened to be accused of any other offence. The Ad Hoc Group of Experts noted the information from the media given in the ensuing paragraphs:

219. It was reported in New Nation of 26 January and The Star of 6 and 22 February 1990 that 16-year-old Mbuyisela Nicholas Phiri from the Sonderwater squatter camp near Khutsong, Carletonville, Western Transvaal, had died at Welverdiend Police Station on 16 January 1990, only hours after having been detained. It was further reported that three persons had alleged in statements to lawyers of the law firm Valley, Waters & Mthembu, that they had heard Phiri's screams as he was being tortured. They claimed that they, too, had been tortured while in custody and described the tortures to which they had been subjected. Phiri's mother, it was reported, did not recognize her son when asked to identify him and found his face swollen, with blood on his mouth. His clothes had been removed from his left shoulder.

220. On 9 March 1990, it was reported in The Star that Mr. Thomas Tshabalala and Mr. Pule "Mac" Mothupi, who had claimed to have heard Phiri being tortured, had been shot dead on 4 March 1990. Although police claimed that they had been fatally wounded in separate incidents of unrest, lawyers quoting statements made to them by Carleton residents, reported that there had been no unrest at the time of the shooting.

221. The New Nation of 5 February and The Star of 6 February 1990 reported that, according to Durban lawyer Miss Linda Zama, Michael Zungu, a member of the South African Youth Congress (SAYCO), had died after being detained and brutally assaulted by police on 29 January 1990. She alleged that Zungu had gone to the Maghibonisane Junior Secondary School to claim back his registration fees, paid earlier. After an exchange of words with the principal, who did not believe that Zungu had his family's approval to claim the funds, police were called in. Zungu, who was allegedly handcuffed and assaulted, was unconscious when placed in a police van. Miss Zama was further reported to have said that when family members took food to him later in the day, they were told that he had been found hanged by his shoelaces.

222. The Star of 16 March 1990 reported that, according to a human rights brief on unrest, 12-year-old Vusi Masina of the Eastern Transvaal was among many detained.

223. It was reported in South of 26 April 1990 that a 15-year-old boy had been held for three days in a police cell without being able to contact his family. It was alleged that he had been assaulted at the Mmare Police Station. It was further reported that a relative, who had come to the police station to see someone else, recognized the boy and noticed that he was covered in blood. The boy's mother reported that when he was brought to court after three days in custody, his face was swollen and still covered in blood.

224. An article in New Nation of 27 April 1990 reported that 200 persons detained in Bushbuckridge on 23 April 1990 included children under the age of 10. It was further reported that the police action had been a crime prevention operation, as also reported by the Human Rights Commission.

225. The Star of 1 May 1990 reported that Mr. Mohamed Motala, a lawyer, estimated that about 50 school children had been among persons arrested in April 1990 while travelling back from a funeral in Schweizer-Reneke, in Western Transvaal. The children were reportedly in detention at Klerksdorp. Among them was Nicodemus Motsikare, a pupil at Memebong High School.

226. It was reported in The Star of 19 July 1990 that Eugene Mbulwane (15) had died at Leratong hospital on 13 July 1990. It was further reported that a witness, whose name was withheld for his protection, had been present when Mbulwane was tortured and beaten unconscious at Welverdient Police Station near Carletonville. The witness claimed also to have been among those tortured and beaten on that occasion. New Nation of 20 July 1990 reported that Elias Letimele, detained along with Mbulwane, claimed that the dead boy had been left unattended for at least nine hours on the cell floor of Khutsong Police Station where he had been transferred after being brutally assaulted at Welverdient Police Station. It was reported that his clothes were torn and blood-stained and that he had difficulty in breathing. Letimele and another youth reportedly helped to carry Mbulwane to the reception office, from where an ambulance took him to hospital.

227. At the 772nd meeting of the Working Group, the representative of the International Confederation of Free Trade Unions (ICFTU) stated that, although it was illegal to employ children as labourers, they were employed on at least one farm owned by Anglo-American, according to its manager. The witness further referred to cases of captive child labourers on farms, who were not paid except in kind. They were allegedly given maize-meal three times a day and were denied medical treatment.

228. In a report covering the month of July 1990, the South African Independent Board of Inquiry into Informal Repression stated that a 13-year-old black child, Andries Nkala, was killed on 24 July 1990 when two white children threw stones at him from the back of a "bakkie" (truck). The white children were seen throwing stones at several black pupils returning from school in the Senekal district. Further, a pupil at the Dr Cingo High School in Maokeng, near Kroonstad, was shot dead on the school playground on 26 July 1990 by two white men dressed in khaki. Taylor Ntsuka (17) was killed and his friend, Tota Malakoane (16), wounded in the thigh and hand when the men drove past the school during break and allegedly started firing without warning. The two middle-aged men were driving a white Toyota minibus. It was alleged that the police knew the identity of the man but that no arrest had been made.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

229. The system of apartheid in South Africa has evolved since President de Klerk made a key policy statement in February 1990. The Government has taken certain positive measures in an attempt to respond to the demands of the international community for change of the apartheid system and create suitable conditions for a negotiated settlement.

230. Between 15 February and the end of November 1990 the activities of the Ad Hoc Working Group of Experts on southern Africa were marked by three major events, while a number of outstanding developments affected the situation in South Africa with regard to the various mandates with which the Group has been entrusted, both by the Commission on Human Rights and by the Economic and Social Council.

Aspects relating to the activities of the Working Group

231. The Working Group was deeply saddened by the death, in Belgrade on 29 September 1990, of one of its members, Professor Branimir Jankovic (Yugoslavia). Mr. Jankovic had been a member of the Working Group since it was set up in 1967. Telegrams of condolences were sent to his family.

232. The Working Group also received a communication from Mr. Humberto Diaz-Casanueva (Chile) in which he announced his resignation, for reasons of health, as he required a long period of convalescence after an illness. Mr. Diaz-Casanueva was Vice-Chairman of the Working Group.

233. The Working Group deeply regretted that its hopes of closer co-operation, both with the Special Committee against Apartheid and with other bodies or organizations pursuing activities similar to its own, were not fulfilled. The Working Group regretted in particular that, owing to lack of funds, it had not yet had an opportunity to take part in conferences or seminars, in accordance with the relevant resolutions relating to its mandate.

Aspects relating to the Group's various mandates

234. In spite of numerous official statements and the elimination of some forms of expression of the policy and practices of apartheid in South Africa, and while it welcomes the lifting of the prohibition of political parties and commends the negotiations that have taken place between the Government of South Africa and the representatives of ANC, which have led to the so-called "Groote Schuur Minute" and the "Pretoria Minute", the Working Group nevertheless notes, as does the Government of South Africa itself, in the letter from its Minister for Foreign Affairs to the Secretary-General of the United Nations dated 11 September 1990, that the major pillars of apartheid, i.e. the Group Areas Act, the Land Acts and the Population Registration Act still remain and considers it necessary to work towards their early repeal in order to achieve the dismantling of apartheid.

235. While the Working Group considers the lifting of the state of emergency in Natal Province to be a constructive step, it notes that the state of emergency remains in force in Bophuthatswana, which is an integral part of the Republic of South Africa. In order to restore peace and public order in that region, there is a pressing need for the state of emergency to be immediately lifted. The same holds for the curfew decreed in the black townships of Tokoza, Vosloorus and Kathlehang to the south-east of Johannesburg, where it has remained in force after 6 October 1990, when the curfew was lifted in Soweto.

236. The Group has received concordant testimony indicating that the South African police continues to enjoy considerable power, as in the past, including the possibility of arresting persons without charge and detaining them for long periods for interrogation.

237. The Working Group also heard testimony from the wife of a white ANC militant who said that her husband, "Mac" Maharaj who, with other former political prisoners had returned to South Africa under the terms of the Indemnity Act of 1990 which guaranteed certain former activists immunity from prosecution to allow them to take part in the peace negotiations, had been arrested.

238. The Working Group points out, moreover, that in spite of what may be described as the positive developments that have taken place, in particular following ANC's decision to suspend the armed struggle, a number of acts of violence have been committed either with the complicity of the police or involving other whites or members of the security forces, in order to place the blame on clashes between members of the black populations themselves. Witnesses also informed the Group that the police not only lacked impartiality when intervening in violent incidents, but also opened fire arbitrarily during peaceful demonstrations. Thus, in many respects the situation remains unchanged.

239. During the period under review murders were also reported. The Working Group regrets, however, that the relevant inquiries, and in particular the inquiry to identify the murderers of Mr. Anton Lubowski and Mr. David Webster, have so far failed to achieve any tangible results. The Working Group notes that the findings of the Harms Commission, which was responsible for investigating the possible involvement of members of the police and security forces in a number of murders, have been sharply criticized by the Independent Board of Inquiry into Informal Repression. The body in question considers in particular that the Harms Commission has failed to follow up all the clues suggested to it, as a result of which it has reached extremely questionable or hasty conclusions.

240. It should also be noted that in spite of the so-called reforms that have taken place since February 1990, Section 29 of the Internal Security Act, authorizing detention without trial, and the use of torture and other forms of ill-treatment as repressive measures, remains in force. As in the past, a number of deaths occurred during arrest or pre-trial detention.

241. During the period under review the Ad Hoc Working Group of Experts learned with regret of several murders for which South African officials were allegedly held responsible, in particular those revealed by the disturbing confession made by Captain Dirk Coetzee before the Harms Commission. Accordingly, it would be extremely useful for the Working Group to update its list of various serious cases in which persons have coldly murdered or carried out assassinations. In that connection, it appears necessary to ascertain the views of States on the question of establishing an international criminal court to try such persons.

242. While taking note of and welcoming the announcement made in Pretoria on 9 October 1990 that the Government of South Africa was to cease prosecution of persons accused of having committed, prior to noon on 8 October, acts classified as political offences, the Group nevertheless deeply regretted that political charges were brought against Mr. "Mac" Maharaj and several other persons who, in the view of the Working Group, should have automatically benefited from the immunity from prosecution decreed by the President of South Africa, in order to allow those exiles who wished to return to the country to do so.

243. During the period under review the Ad Hoc Working Group of Experts noted that, in spite of the abrogation of the Reservation of Separate Amenities Act as of 15 October 1990, a number of municipal councils in South Africa had sought to exploit legal loopholes in order to discourage and prevent the black population from using public places and facilities, for example by requiring prior payment of a local property tax that few blacks are able to pay. This has occurred, in particular, in Transvaal, where conservatives predominate.

244. As the Group indicated in its previous reports, implementation of the Disclosure of Foreign Funding Act No. 26, which came into force on 18 April 1989, also continued during the period. As a result, four organizations have been designated as "reporting organizations", which may be exploited or used by the police or other official organizations.

245. In addition to this legislation, the Group has received information that during the same period two organizations, the National Union of South African Students (NUSAS) and the United Democratic Front (UDF) were declared "affected organizations" under the Affected Organizations Act, as a result of which they are unable to receive funds from abroad.

246. In spite of a number of statements of intent from the South African Government to bring about superficial changes, the Ad Hoc Working Group of Experts noted that the situation in South Africa remained unchanged or became worse than before, and that there were contradictions in the attitude of the Government of South Africa.

247. As an illustration, the consequences of the Mier Rural Areas Bill, adopted on 13 June 1990, may be mentioned. This Bill empowers the Minister of Housing and Local Government to sell land in the town of Mier, inhabited by 5,000 persons of mixed descent, which he is supposed to hold in trust on behalf of the community. Thus, the community is threatened with the loss of its land at the very time that it is claimed that attempts are being made to recognize the rights of other sectors of South Africa's population.

248. Furthermore, if official statements are to be believed, the Government of South Africa is likely to postpone until 1991 legislation concerning the Land Acts of 1913 and 1936, which should allow the black population to purchase agricultural land throughout the country. However, the purchase and above all the working of land requires substantial funds which it would be difficult for the black population to muster, after 40 years of segregation. Consequently, at least in the opinion of the black population, such a reform would not constitute a step forward unless it was matched by other positive corrective measures to express the sincere wish of the Government of South Africa to put an end, once and for all, to the previous system of exploitation.

249. Witnesses also informed the Working Group that, while it has become harder for the Government of South Africa to decide forced population removals, the policy of doing so is still in force.

250. The Working Group's special attention was drawn to the situation during this period of farmworkers who are not protected by any labour legislation under the Industrial Conciliation Act or the Employment Act. Accordingly, workers in this category are at the mercy of employers who arbitrarily determine workers' wages or decide to dismiss them, without being held accountable to any authority whatsoever. Workers or their relations who try to resist are subjected to acts of violence or reprisals. Witnesses also spoke of the poor conditions for farmworkers, who include children and teenagers.

251. Despite the statements by President F.W. de Klerk about the easing of the earlier restrictions on the freedom of the press, the Working Group noted that freedom of the press and particularly protection of journalists were in no way safeguarded during the period under review and that the ordinary laws, currently 100 in number, in fact create many obstacles and considerably restrict freedom of expression.

252. In connection with the right to health, witnesses related that although segregation in health care had been abolished, administrative steps were being taken to assign the best-equipped hospitals to the white residential areas, under the system of "Own Affairs". As a result, there was no improvement in the health care for blacks in many parts of South Africa.

253. Regarding the situation of black workers and the exercise of their right to work and freedom of association, witnesses informed the Group that, in spite of the South African Government's promise to adopt the standards of the International Labour Organisation and the consequent intention to introduce changes in Parliament, the 1988 Labour Relations Amendment Act remains unchanged and black workers are therefore still denied the rights of the individual, as well as basic trade union rights.

254. One of the consequences of the retention of the above Act is that restrictions are still imposed on black South African workers' right to strike and they do not enjoy any protection against arbitrary dismissal or retrenchment.

255. In connection with the right to freedom of association, witnesses also revealed that on 1 April 1990, the general prohibition of political meetings under the Internal Security Act has been renewed for the fifteenth consecutive year.

256. The situation with regard to trade unions remained unchanged during this period, for trade unionists were still subjected to harassment of all kinds, and to arrest or detention under the Internal Security Act.

257. Witnesses also reaffirmed the usefulness of sanctions as one of the means of overcoming the apartheid régime. The same is true of disinvestment by foreign firms in South Africa.

258. The Group heard disturbing accounts by teenagers who said that they had been subjected to arrest, torture and other ill-treatment and harassment and that they were victimized if they dared to organize boycotts to protest against discrimination in schools and the quality of education provided for black children or against the shortage of textbooks or school facilities.

259. Witnesses also informed the Group of the way children were used as farmworkers in spite of the law prohibiting child labour and said that their wages were often paid in kind.

260. The overwhelming evidence produced before the Ad Hoc Working Group of Experts shows that, despite the good intentions of President F.W. de Klerk, injustice, inhumanity and brutality continue to dominate the day-to-day lives of the majority of the people of South Africa. State organs have been unable and sometimes unwilling to take sufficient measures to control the situation, thereby undermining the desired environment for confidence-building between the white minority Government and the black majority.

261. The evidence placed before the Ad Hoc Working Group of Experts shows that the internecine violence is based on ideological rather than tribal considerations, and in certain cases has been incited or organized by right-wing elements in South Africa.

B. Recommendations

262. In view of the foregoing, the Ad Hoc Working Group of Experts recommends that the Commission on Human Rights should:

1. Renew the mandate of the Ad Hoc Working Group of Experts on southern Africa, with its current membership; and invite the Chairperson of the Commission on Human Rights to fill the two vacancies in the Ad Hoc Working Group of Experts on southern Africa;

2. Again invite all bodies or organizations engaged in the area of activities related to the various mandates of the Ad Hoc Working Group of Experts, and particularly the Special Committee against Apartheid, to co-operate more closely with the Group;

3. Authorize the Ad Hoc Working Group of Experts to organize, in the course of 1991 and 1992, and within the limits of available resources, conferences, seminars or any other kind of activity to secure heightened awareness in the international community, and particularly among young people, of the consequences of apartheid and of any form of discrimination based on race;

4. Use all ways and means, including sanctions, and not slacken any kind of pressure on the South African Government, until such time as it has dismantled the policy and all practices arising from it and, in particular, purely and simply repeal any legislation justifying them and prohibit the adoption of any further legislation that would preserve theoretical or de facto discrimination by one racial group over others;

5. Invite the South African Government to lift immediately the state of emergency throughout South African territory, including Bophuthatswana;

6. Invite the South African Government to respect more scrupulously all its commitments, with a view to restoring peace and confidence so as to facilitate the advent of a new, unitary, democratic and non-racial South Africa; in particular, invite the Government effectively to halt proceedings against former political prisoners and immediately release those under arrest or detention;

7. Invite the South African Government to clarify the assassinations committed for so-called reasons of State security and punish the guilty. In this regard, the Working Group should be authorized to update the list it has prepared in this connection and to include in it the names of all those who have committed assassinations in serious circumstances. States should also be invited to give their views on the desirability of establishing an international criminal tribunal to judge persons presumed to be responsible for the above-mentioned assassinations, bearing in mind the progress of the work of the International Law Commission of the United Nations on similar questions;

8. Invite the Government of South Africa to take all possible measures to prevent the arrest, torture and other ill-treatment and harassment of children and young persons;

9. Recommend that the Ad Hoc Working Group of Experts should closely follow the situation of black farmworkers and black children in general and particularly those employed in agricultural enterprises, and submit a report to it at its forty-seventh session;

10. Submit its report to the General Assembly of the United Nations at its forty-sixth session, including the latest available information;

11. Request the South African Government to authorize the Ad Hoc Working Group of Experts to visit South Africa in order to investigate the human rights situation in the country, including the conditions of detention of individuals and the living conditions of prisoners, and to carry out any activity falling within its various mandates, and to report to it at its forty-seventh session.

Annex I

STATEMENT ISSUED AT CONCLUSION OF TALKS BETWEEN THE GOVERNMENT OF SOUTH AFRICA AND THE AFRICAN NATIONAL CONGRESS OF SOUTH AFRICA, HELD AT CAPE TOWN FROM 2 TO 4 MAY 1990

"The Groote Schuur Minute"

The Government and the African National Congress of South Africa (ANC) agree on a common commitment towards the resolution of the existing climate of violence and intimidation from whatever quarter as well as a commitment to stability and to a peaceful process of negotiations. Flowing from this commitment, the following was agreed upon:

1. The establishment of a working group to make recommendations on a definition of political offences in the South African situation; to discuss, in this regard, time scales; and to advise on norms and mechanisms for dealing with the release of political prisoners and the granting of immunity in respect of political offences to those inside and outside South Africa. All persons who may be affected will be considered. The working group will bear in mind experiences in Namibia and elsewhere. The working group will aim to complete its work before 21 May 1990. It is understood that the South African Government, in its discretion, may consult other political parties and movements and other relevant bodies. The proceedings of the working group will be confidential. In the meantime, the following offences will receive attention immediately:

(a) The leaving of the country without a valid travel document;

(b) Any offences related merely to organizations which were previously prohibited.

2. In addition to the arrangements mentioned in paragraph 1, temporary immunity from prosecution for political offences committed before today will be considered on an urgent basis for members of the National Executive Committee and selected other members of ANC from outside the country, to enable them to return and help with the establishment and management of political activities, to assist in bringing violence to an end and to take part in peaceful political negotiations.

3. The Government undertakes to review existing security legislation to bring it into line with the new dynamic situation developing in South Africa in order to ensure normal and free political activities.

4. The Government reiterates its commitment to work towards the lifting of the state of emergency. In this context, ANC will exert itself to fulfil the objectives contained in the preamble.

5. Efficient channels of communication between the Government and ANC will be established in order to curb violence and intimidation from whatever quarter effectively.

The Government and ANC agree that the objectives contained in this minute should be achieved as early as possible.

Annex II

AGREEMENT REACHED BY THE GOVERNMENT OF SOUTH AFRICA AND THE AFRICAN NATIONAL CONGRESS OF SOUTH AFRICA AT THE CONCLUSION OF TALKS HELD AT PRETORIA ON 6 AUGUST 1990

"The Pretoria Minute"

The Government and the African National Congress of South Africa (ANC) have held discussions at the Presidency, Pretoria, today, 6 August 1990.

1. The Government and ANC have again committed themselves to the Groote Schuur Minute.

2. The final report of the Working Group on political offences, dated 21 May 1990, as amended, was accepted by both parties. The guidelines to be formulated in terms of the report will be applied in a phased manner. The report makes provision for the formulation of guidelines that will be applied in dealing with members of all organizations, groupings or institutions, governmental or otherwise, who committed offences on the assumption that a particular cause was being served or opposed. The meeting has instructed the Working Group to draw up a plan for the release of ANC-related prisoners and the granting of indemnity to people in a phased manner and to report before the end of August 1990. The following target dates have in the meantime been agreed upon:

- The body or bodies referred to in paragraph 8.2 of the report of the Working Group.

- The further release of prisoners which can be dealt with administratively will start on 1 September 1990.

- Indemnity which can be dealt with in categories of persons and not on an individual basis will be granted as from 1 October 1990. This process will be completed not later than the end of 1990.

- In all cases where the body or bodies to be constituted according to paragraph 8.2 of the report of the Working Group will have to consider cases on an individual basis, the process will be expedited as much as possible. It is hoped that this process will be completed within six months, but the largest date envisaged for the completion of the total task in terms of the report of the Working Group is not later than 30 April 1991.

This programme will be implemented on the basis of the report of the Working Group.

3. In the interest of moving as speedily as possible towards a negotiated peaceful political settlement and in the context of the agreements reached, ANC announced that it was now suspending all armed actions with immediate effect. As a result of this, no further armed actions and related activities by ANC and its military wing Umkhonto We Sizwe will take place. It was agreed that the Working Group would be established to resolve all outstanding

questions arising out of this decision, to report by 15 September 1990. Both sides once more committed themselves to do everything in their power to bring about a peaceful solution as quickly as possible.

4. Both delegations expressed serious concern about the general level of violence, intimidation and unrest in the country, especially in Natal. They agreed that in the context of the common search for peace and stability, it was vital that understanding should grow among all sections of the South African population that problems can and should be solved through negotiations. Both parties committed themselves to undertake steps and measures to promote and expedite the normalization and stabilization of the situation in line with the spirit of mutual trust obtaining among the leaders involved.

5. With due cognizance of the interest, role and involvement of other parties, the delegations consider it necessary that whatever additional mechanisms of communication are needed should be developed at local, regional and national levels. This should enable public grievances to be addressed peacefully and in good time, avoiding conflict.

6. The Government has undertaken to consider the lifting of the state of emergency in Natal as early as possible in the light of positive consequences that should result from this accord.

7. In view of the new circumstances now emerging, there will be an ongoing review of security legislation. The Government will give immediate consideration to repealing all provisions of the Internal Security Act that:

(a) Refer to communism or the furthering thereof;

(b) Provide for a consolidated list;

(c) Provide for a prohibition on the publication of statements or writings of certain persons;

(d) Provide for an amount to be deposited before a newspaper may be registered.

The Government will continue reviewing security legislation and its application in order to ensure free political activity and with the view to introducing amending legislation at the next session of Parliament. The Minister of Justice will issue a statement in this regard, inter alia, calling for comment and proposals.

8. We are convinced that what we have agreed upon today can become a milestone on the road to true peace and prosperity for our country. In this we do not pretend to be the only parties involved in the process of shaping the new South Africa. We know there are other parties committed to peaceful progress. All of us can henceforth walk that road in consultation and co-operation with each other. We call upon all those who have not yet committed themselves to peaceful negotiations to do so now.

9. Against this background, the way is now open to proceed towards negotiations on a new constitution. Exploratory talks in this regard will be held before the next meeting which will be held soon.

Annex III

Government Gazette Notice No. 12489 dated 19 May 1990

Under a Notice of Temporary Immunity (No. 1139) of the Acting President of the Republic of South Africa, under the Indemnity Act of 1990 (Act No. 35 of 1990), the following persons were given immunity in the Schedule to the Act:

CRONIN, Jeremy	DLAMINI, Stephen
HANI, Chris	JELE, Joe
JORDAN, Pallo	KASRILS, Ronnie
MABIZELA, Stanley	MADUNA, Penuell
MAHARAJ, "Mac"	MAKANA, Simon
MAKGOTHI, Henry	MANCI, Robert
MARCUS, Gill	MBEKI, Thabo
MELI, Francis	MFENYANE, Sindiso
MODISE, Joe	MOKWENA, Timothy
MOLEFE, Jacqueline	MOMPATI, Ruth
MONGALO, Anthony	NETSHITENDZHE, Joel
NHLANHLA, Joe	NKADIMENG, John
NKOBI, Thomas Titus	NZO, Alfred
PAHAD, Aziz	PILISO, Mzwai
SELEBI, Jackie	SEPTEMBER, Reginald
SHOPE, Gertrude	SIGXASHE, Sizakhele
SLOVO, Joe	STUART, James
TAMBO, Oliver Reginald	TLOOME, Dan
TSHWETE, Steve	ZUMA, Jacob

Note: This document is published in Afrikaans and English.

Annex IV

Republic of South Africa

Government Gazette

Regulation Gazette No. 4584

Vol. 305 Pretoria, 7 November 1990 No. 12834

GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE

No. R. 2625 7 November 1990

A. GUIDELINES FOR DEFINING POLITICAL OFFENCES IN SOUTH AFRICA

B. PROCESS OF GRANTING PARDON AND INDEMNITY

C. TEMPORARY IMMUNITY

D. ENTRY INTO THE REPUBLIC

INFORMATION REGARDING THE ABOVE-MENTIONED MATTERS IS PUBLISHED HEREUNDER FOR GENERAL NOTICE

A. GUIDELINES FOR DEFINING POLITICAL OFFENCES IN SOUTH AFRICA

INTRODUCTION

1.1 In the Groote Schuur Minute the Government and the African National Congress agreed upon the establishment of a working group to make recommendations on a definition of political offences in the South African situation; to discuss, in this regard, time scales; and to advise on norms and mechanisms for dealing with the release of political prisoners and the granting of immunity in respect of political offences to those inside and outside South Africa. There is no generally accepted definition of "political offence" or "political prisoner" in international law. What is generally accepted, however, is that principles developed in the field of extradition law are relevant in distinguishing between "political offences" and "common crimes". The law and practice of States show that there is now a considerable degree of consensus both as to the types of offence which may in principle be classified as political as well as to the sort of factors which should be taken into account in deciding whether an offence is "political" or not.

1.2 The final report of the Working Group was accepted by both parties, as reflected in the Pretoria Minute and provides inter alia:

> "The Working Group endorses the principles and factors set out in paragraph 6.5.2 and accepts that these will form the basis of guidelines to meet the South African situation when considering the grant of pardon or indemnity in respect of political offences ...

> As stated in the Groote Schuur Minute, it is understood that the Government may in its discretion consult other political parties and movements, and other relevant bodies with regard to the grant of pardon or indemnity in respect of offences relating to them. For this purpose it shall be free to formulate its own guidelines which it will apply in dealing with members of such organizations, groupings or institutions, governmental or otherwise, who committed offences on the assumption that a particular cause was being served or opposed."

1.3 In formulating these guidelines the Government has borne in mind that in the South African situation there are a variety of institutions and political organizations and groupings across the whole political spectrum. In the interests of the process of reconciliation the Government considers it appropriate that all persons, irrespective of their affiliations, who have committed political offences in the South African situation, should be considered for the grant of pardon or indemnity. These guidelines will therefore be applied when dealing with, amongst others, members of a variety of organizations, groupings or institutions, governmental or otherwise, who committed political offences on the assumption that a particular cause was being served or opposed.

2.1 The Government accepts that the following classes of persons, whether inside or outside South Africa, should be taken into account with regard to the grant of pardon, indemnity or release for political offences:

(a) Persons already sentenced, including persons serving a sentence, persons subject to any suspended sentence, persons awaiting execution of a sentence or where the case is on appeal or review.

(b) Persons who may be liable to prosecution, or who are awaiting or undergoing trial.

(c) Persons in detention.

2.2 The power to pardon is vested in the State President by virtue of section 6 of the Republic of South Africa Constitution Act, 1983 (Act No. 110 of 1983), and section 69 of the Prisons Act, 1959 (Act No. 8 of 1959), and will apply to persons already sentenced, i.e. class (a) above: Provided that a person who has been sentenced to death and whose sentence was commuted to a term of imprisonment in terms of section 6 of Act No. 110 of 1983, will not automatically in terms of these guidelines be entitled to further consideration in terms of section 69 of Act No. 8 of 1959.

2.3 Special power to grant indemnity is required in regard to persons referred to in class (b) above. The relevant power is contained in section 2 of the Indemnity Act, 1990. Section 6 of the Criminal Procedure Act, 1977 provides for the stopping of a prosecution and may therefore also be applied. As regards persons referred to in class (c) above the relevant powers of release are contained in security legislation.

2.4 The procedures contained in this document relate only to political offences and in no way imply any limitation upon the general exercise of the powers mentioned in paragraphs 2.2 and 2.3.

GUIDELINES

3.1 In pursuance of the above, a set of guidelines was adopted to be applied to all organizations, groupings, institutions, governmental or otherwise, and individuals.

3.2 Taking these into account the following factors, as may be appropriate in a particular case, will be considered when making a recommendation for the grant of pardon or indemnity in appropriate cases:

(i) The motive of the offender, i.e. whether the offence was committed for a political motive (e.g. to further or oppose the aims of a political organization, institution or body) or for a personal motive.

(ii) The context in which the offence was committed; in particular whether it was committed in the course of or as part of a political uprising or disturbance, or in reaction thereto.

(iii) The nature of the political objective (e.g. whether to force a change in the policy of or to overthrow or destroy the political opponent).

(iv) The legal and factual nature of the offence, including its gravity.

(v) The object and/or objective of the offence (e.g. whether it was committed against the political opponent or his property, or directed primarily against private individuals or property; or was committed on the assumption that a particular cause, governmental or otherwise, was being served).

(vi) The relationship between the offence and the political objective being pursued, e.g. the directness or proximity of the relationship, or the proportionality between the offence and the objective pursued.

(vii) The question whether the act was committed in the execution of an order or with the approval of the organization, institution or body concerned.

B. PROCESS OF GRANTING PARDON OR INDEMNITY

TIME-SCALE

4.1 The granting of pardon or indemnity in terms of the above-mentioned guidelines will only be considered in respect of political offences committed on or before 12.00 on 8 October 1990.

4.2 In paragraph 3 of the Pretoria Minute the ANC, in the interest of moving as speedily as possible towards a negotiated peaceful political settlement, undertook in the context of the agreements reached, to suspend all armed action and related activities with immediate effect. The rate at which progress is made under paragraph 3 of the Pretoria Minute will therefore obviously determine the time-scales within which indemnity can be granted and

prisoners can be released. The more difficult cases and especially offences involving elements of violence or acts preparatory to violence will only be considered once it is apparent that the principles and the undertakings in the Groote Schuur and Pretoria Minutes are being complied with, or to the extent that other organizations or individual persons commit themselves to peaceful solutions and development.

MECHANISM

Consulting bodies

5.1 The granting of pardon or indemnity in respect of a specific offence or a category of offences, is an executive governmental function. Consulting bodies are included in the mechanism to provide the executive in appropriate cases with wise advice and to demonstrate that the interest of all parties are being taken into account in as objective a manner as possible.

5.2 A body or bodies will now be constituted in terms of the Regulations issued under section 3 of the Indemnity Act, 1990, consisting of a convener with ad hoc appointments from concerned groups when dealing with particular offences (or categories of offences).

Categories of persons

6.1 Unconditional indemnity will now be granted to the following categories of persons:

(a) Persons who left South Africa without being in possession of valid travel documents. Such indemnity will be granted on an individual basis, alternatively per a list of names.

(b) Persons who left South Africa at a place other than a port referred to in section 2(b) of the Departure from the Union Regulation Act, 1955 (Act No. 34 of 1955).

6.2 Recommendations relating to the identification of further categories may be made by interested persons and shall be considered by the Executive in accordance with the guidelines referred to in paragraph 3 above. The consulting body or bodies may be approached for advice when dealing with categories of offences.

6.3 Should there be any doubt in a particular case as to whether a person is covered by a category of certain events or a particular event published in the Gazette it is recommended that such a person should apply for indemnity on an individual basis in the manner as suggested hereunder.

Individual persons

7.1 In order to facilitate and expedite applications for indemnity on an individual basis, all applications must please be addressed to the Office for Indemnity, Immunity and Release, Private Bag X655, Pretoria, 0001 (Tel. 323-9302; Fax number 21-1922).

7.2 An application form which must be used by persons who want to apply for indemnity, is available at the above-mentioned address. A specimen thereof is contained in Annexure A, and copies may be obtained at the office referred to in paragraph 7.1 above.

7.3 If the applicant is a member of an organization, he should channel his application through the organization concerned. The organization should also make a recommendation.

7.4 The Department of Justice will process the applications to the State President.

7.5 Should the State President turn down an application for indemnity, the applicant shall have the right to request that his application be referred to the consulting body to advise the State President on the matter. The consulting body will then investigate the matter and thereafter refer it back to the State President together with the recommendation.

Criminal trials

8.1 The process set out in these guidelines shall not be construed as precluding an Attorney-General, in any appropriate case, from continuing with a prosecution. The State President may at the conclusion of such trial or in the course of proceedings or at the conclusion thereof exercise the powers referred to in paragraph 2.2 or 2.3 above. The issues of postponement and granting of bail remain entirely within the jurisdictional sphere of the Attorneys-General and the courts of law.

8.2 In matters where the police have already investigated a case against a person who applies for indemnity and the decision of the Attorney-General whether or not to prosecute is pending, the Attorney-General's decision and comment shall also be submitted to the State President. In matters where the Attorney-General has already decided to prosecute a person concerned, but where the case against the person has not yet commenced, or where the case has commenced, but has not been finalized, the Attorney-General's comment shall also be submitted to the State President. In this regard attention is also directed to paragraph 4.1 of this document.

Release of sentenced prisoners

9. Annexure A also makes provision for application for the release of sentenced persons who wish to apply for release. These applications should also be addressed to the above-mentioned Office for Indemnity, Immunity and Release. In this regard paragraphs 7.3 to 7.5 will apply mutatis mutandis.

C. TEMPORARY IMMUNITY

10. Persons not now applying for indemnity may nevertheless want to temporarily enter the Republic with a view to the promotion of peaceful constitutional solutions in South Africa. In order to facilitate and expedite their applications for temporary immunity such persons are advised to make use of the application form contained in Annexure B. This form will be published in the Gazette and copies thereof are available at the Office for Indemnity, Immunity and Release, Private Bag X655, Pretoria, 0001.

D. ENTRY INTO THE REPUBLIC

11. Apart from the above all persons abroad must still satisfy the requirements of citizenship and the right to stay in the Republic before being allowed to enter the Republic. The Department of Home Affairs should be approached in this regard prior to the departure of the person concerned for the Republic. Persons who wish to return to the Republic must on arrival already be in possession of documents of citizenship and such other documents as may be necessary, or apply afresh beforehand for such documents if they are not in possession thereof. The Department of Home Affairs will announce guidelines regarding the procedure to be followed in respect of persons who wish to return to the Republic.

Note: This document is published in Afrikaans and English.